

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUL 17 1958

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CLERK

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

82

PETER H. OLSON,
as Special Trustee of Local 118,
Bakery and Confectionery Workers' International Union of America,
and as Acting Secretary-Treasurer of the
Bakery and Confectionery Workers' International Union of America,

Appellant,

v.

CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,443

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as Special Trustee of Local 118,
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JOINT APPENDIX

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JOINT APPENDIX

1 [Filed January 4, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER H. OLSON, as Special Trustee of
Local 118, Bakery and Confectionery Workers'
International Union of America, and as Acting
Secretary-Treasurer of the Bakery and Confectionery
Workers' International Union of America,
2300 Connecticut Avenue, N. W.
Washington, D. C.

Plaintiff,

v.

CHARLES MILLER
1400 Oglethorpe Street, N. W.
Washington, D. C.

MILTON LINK
3104 E Street, S. E.
Washington, D. C.

C. B. McCLOSKEY
635 F Street, N. W.
Washington, D. C.

ADOLPH HELLWIG
635 F Street, N. W.
Washington, D. C.

HARRY LOCKWOOD
242 Peabody Street, N. W.
Washington, D. C.

JAMES MAY
6444 Lanham Lane
Washington, D. C.

JAMES AX
635 F Street, N. W.
Washington, D. C.

ORIENTAL BUILDING ASSOCIATION
600 F Street, N. W.
Washington, D. C.

WASHINGTON PERMANENT BUILDING ASSOCIATION
1421 F Street, N. W.
Washington, D. C.

Civil Action
No. 20-58

THE CITY BANK OF WASHINGTON)
 9th & Massachusetts Avenue, N. W.)
 Washington, D. C.)

THE PRUDENTIAL BUILDING ASSOCIATION)
 1338 G Street, N. W.)
 Washington, D. C.)

THE SECOND NATIONAL BANK OF WASHINGTON)
 1333 G Street, N. W.)
 Washington, D. C.)

Defendants)

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COMPLAINT

FOR INJUNCTION, ACCOUNTING, OTHER
 EQUITABLE RELIEF, AND DAMAGES

1. Plaintiff, Peter H. Olson, who resides at 2300 Connecticut Avenue, N. W., Washington, D. C., and who has an office at 1145 - 19th Street, N. W., Washington, D. C., brings this action as Special Trustee of Local 118, Bakery and Confectionery Workers' International Union of America, and as Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America. The individual defendants are all former members and officers of said Local 118, Bakery and Confectionery Workers' International Union of America, and are all residents of or persons who are to be found in the District of Columbia. The bank and building and loan association defendants are all banks or building and loan associations doing business and to be found in the District of Columbia. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00. The jurisdiction of this Court is invoked under Sections 305 and 306 of Title 11 of the D. C. Code (1951 ed.).

2. The Bakery and Confectionery Workers' International Union of America (hereinafter referred to as the "International") is an unincorporated association with more than 150,000 members, with its principal office in Washington, D. C. The International has chartered and is the parent body of various subordinate agencies constituted as Local Unions, which are in all respects derived from, subordinate to, and governed by the International under a written constitution, a copy of which is annexed

hereto and made a part hereof as Exhibit "A".

- 3 3. Plaintiff, Peter H. Olson, is a duly elected Vice-President of the International and was duly designated as Special Trustee of Local 118 of the International (hereinafter referred to as "Local 118") by the General Executive Board of the International pursuant to and in accordance with Article XX, Section 4, of the International Constitution and presently holds and exercises the authority and duties of Special Trustee of Local 118.

4. Plaintiff, Peter H. Olson, was duly designated as Acting Secretary-Treasurer of the International by its General Executive Board pursuant to and in accordance with Article IV, Section 6, of the International Constitution and presently holds and exercises the authority and duties of Secretary-Treasurer of the International.

5. Local 118 was duly chartered by the International as a subordinate body and thereby agreed to and was bound by the International Constitution; said Local 118 maintains its offices at 635 F Street, N. W., Washington, D. C.

6. Defendants Charles Miller, Milton Link, C. B. McClosky, Adolph Hellwig, Harry Lockwood, James May, and James Ax, are former members and officers of said Local 118, who, by their acts and conduct, have abandoned and vacated their membership and former positions and have by operation of and in accordance with Article XX, Section 4, of the International Constitution, been superseded as officers of said Local 118 by the Plaintiff, Peter H. Olson, as Special Trustee, who was vested with their functions and authority by designation of the General Executive Board as Special Trustee as aforesaid.

- 4 7. Plaintiff is informed and believes and upon such information and belief alleges that defendants Oriental Building Association, Washington Permanent Building Association, The City Bank of Washington, The Second National Bank of Washington, and The Prudential Building Association, are each banking corporations and together with one or more banking corporations whose names are presently unknown to plaintiff are each depositaries of funds, assets, and property of plaintiff.

The defendants referred to in this paragraph and said banking corporations whose names are presently unknown to plaintiff are hereinafter collectively called the "Banks".

8. Plaintiff, Peter H. Olson, under and by virtue of his designation as Special Trustee is authorized and empowered to act for and on behalf of said Local 118 in all respects during the term of his trusteeship, to preserve the rights and interest of the members thereof and of the International, to take possession of all the funds, books, papers, and other property of said Local 118, and to institute all necessary action to recover monies or other property of said Local 118.

9. Defendants, other than the Banks, as and while former members and officers of Local 118, and each of them in concert with others, conspired to perform and did perform by unlawful means and in violation and breach of the International Constitution, acts purporting to effect a secession of said Local 118 from the International and/or the dissolution of said Local.

10. Said acts and conduct of the said defendants were in breach and violation of Article XVII, Section 3, of the International Constitution, which provides as follows:

5 "Sec. 3. Membership in the International Union constitutes an acceptance by each member to be bound by the provisions of the Constitution, the oath of membership and the laws, policies and directives of the International Union and the local unions. It is the duty and obligation of every member to report to the General Executive Board every infringement of the Constitution by any subordinate body or member or officer thereof."

11. Said acts and conduct of said defendants were in breach and violation of Article XIV, Section 22, of the International Constitution, which provides in part as follows:

"Sec. 22. No local can dissolve while seven members remain in good standing and desire to retain the charter."

12. Plaintiff is informed and believes and upon such information and belief alleges that more than seven members in good standing of Local 118 desire to retain its charter.

13. Subsequent to the purported secession and/or dissolution of said Local 118 as a subordinate body of the International, the defendants, other than the Banks, and each of them, in concert with others, conspired to perform and did perform acts purporting to effect a transfer of the name, membership, property, collective bargaining contracts, books, and records of said Local 118 from the International to an unincorporated organization known as the American Bakery and Confectionery Workers' International Union (hereinafter referred to as the "ABC Union"); and prior and subsequent to said purported secession and/or dissolution, they conspired to and did secrete, waste, and dissipate part or all of the funds of said Local 118 by unauthorized and unlawful payments and withdrawals therefrom for purposes and objects in conflict with and in breach and violation of the International Constitution.

14. Prior and subsequent to the purported secession and/or dissolution of said Local 118 as a subordinate body of the International, the defendants, other than the Banks, and each of them, in concert with
6 others, conspired to and did establish the ABC Union as a rival, dual and hostile labor organization of the International with the object and purpose of enticing and inducing other individual members, officers, and subordinate bodies of the International to engage in similar unlawful acts of attempted secession and/or dissolution and purported transfers of affiliation from the International to said ABC Union and to encourage such acts of disloyalty by individual members, officers, and subordinate bodies of the International to the International and in violation of the International Constitution and their duties and obligations thereunder.

15. Such acts and conduct were in breach of and in violation of Article XVII, Section 4, of the International Constitution, which constitutes the membership oath and provides in part:

"I solemnly promise to maintain the Constitution of the International Union and the By-Laws of this or any other Local Union with which I may become affiliated as they are now constituted or may later be changed.

"I promise to maintain the dignity of this organization and to further its objectives.

"I furthermore promise that I will not join or render aid or comfort to any organization hostile to the Bakery and Confectionery Workers' International Union of America and that I will keep secret the proceedings of this Union."

16. Such acts and conduct were in breach and violation of Article XIV, Section 8, of the International Constitution, which provides in part:

"Sec. 8. All funds and property of the local union shall be held by it in the name of the local union to be used only for the purpose of effectuating the objectives of this Constitution and in accordance with its provisions."

7 17. By reason of the acts and conduct of the defendants as aforesaid the General Executive Board of the International exercised its authority under Article XX, Section 4, of the International Constitution and invoked the emergency provisions thereof by the designation of the plaintiff, Peter H. Olson, as Special Trustee of Local 118 and did in all respects conform to and comply with said Constitution.

18. The plaintiff, Peter H. Olson, as Special Trustee under Article XX, Section 4(d), is required to take possession of all funds, books, papers, and other property of said Local 118 and to institute all necessary action to recover the money or other property of said Local 118, as specifically therein provided:

"(d) The special trustee shall take possession of all the funds, books, papers and other property of the subordinate affiliate and tender a receipt for same. He shall institute all necessary action to recover money or other properties of the subordinate affiliate."

19. On or about the 20th day of December 1957, the plaintiff notified defendants, other than the Banks, to vacate their positions as officers of Local 118 and to cease holding themselves out as occupying same or vested with any authority in connection therewith, and duly demanded that said defendants turn over to him all funds, property, and other assets of Local 118 in their possession or under their control, which demand said defendants refused and failed to comply with and continued to refuse and fail to comply with.

20. That on or about December 19, 1957, the plaintiff advised the defendants Washington Permanent Building Association, Oriental Building

Association, and City Bank of Washington that he had been designated as Trustee of Local 118, had succeeded all officers thereof, and was vested with the authority to exercise the functions of their offices. The responses received by plaintiff from defendants Oriental Building Association and Washington Permanent Building Association, as set forth more fully in the affidavit of plaintiff filed herewith and hereby

8 incorporated by reference, indicated that the individual defendants or some of them had already withdrawn the funds of Local 118 that had been on deposit with those Associations in amounts aggregating approximately \$15,500.00.

21. Prior to and since the notice referred to in paragraph 19 hereof, the defendants, other than the Banks, and each of them, have presumed to exercise the authority of their former offices and have refused, and continued to refuse, to comply with the International Constitution, more particularly Article XX, Section 4, thereof, and have in fact acted in all respects as if said Local 118 had lawfully seceded from the International Union and/or had been legally dissolved and duly transferred to the ABC Union with all its members, collective bargaining agreements, property, and funds.

22. The said acts of the defendants, other than the Banks, and each of them, in concert with others, did not and does not effect the secession, dissolution, or disaffiliation of Local 118 from the International, and said Local 118 continues to be and is a subordinate body of the International.

23. The individual defendants herein have unlawfully seized, spent, transferred, conveyed, used, and disbursed the monies, property, and assets of said Local 118 and threaten to continue to perform such acts of depletion and unlawful disbursement by acting without lawful authority with respect thereto, more particularly with respect to deposits and other assets having a value in excess of \$32,000, over which said individual defendants, or some of them, have wrongfully asserted and exercised authority and continue to do so, and which funds are and continue to be the property of Local 118 as an affiliate and subordinate body of the International.

24. Plaintiff has a property right in and to the use of the name Local 118 and derivations thereof; Local 118 as an affiliate and subordinate body of the International acquired such right by long and constant use and at great cost and expense; nevertheless, the individual defendants have represented themselves as the owners of the property

9 in and right to use said name, and have used and applied said name and designated themselves to employers and to the public generally by said name Local 118, and have unlawfully appropriated the said identification "118" in combination with the name "American Bakery and Confectionery Workers' International Union."

25. The wrongful appropriation by the individual defendants of the identical local union number, "118" which constitutes the identity part of the name, trade name, and designation of Local 118 of the International, has confused, will confuse, and was and is calculated to confuse the members of Local 118 and of the International, the community at large, and those who have business relations with Local 118 and the International, including employers, tradesmen, banks, printers, newspapers, radio stations, and the general public and that such persons and organizations have been and will be deceived as a result thereof, causing such great confusion and uncertainty and deception as to operate to induce persons to join or deal with the ABC Union in the belief that said ABC Union is the same as or the successor in interest to Local 118, all to the irreparable injury to Local 118, the members thereof, and the International.

26. By reason of the acts and conduct of the individual defendants, the funds, assets, and property of Local 118 have been and continue to be dissipated and wasted; said funds, assets, and property have been and continue to be diverted, dissipated, and wasted in breach and violation of the proper and lawful purposes of Local 118 and the International under the International Constitution as aforesaid.

27. The individual defendants herein have threatened and are threatening to continue to perform the unlawful acts hereinabove complained of.

10 28. The said wrongful acts by the individual defendants will confuse and were and are calculated to confuse the members of Local 118 and of the International, the community at large and those who have business relations with Local 118 and the International, including employers, tradesmen, banks, printers, newspapers, radio stations, and the general public, and that such persons and organizations have been and will be deceived as a result thereof, causing such great confusion and uncertainty and deception as to operate to induce persons to join or deal with the individual defendants in the belief that said individual defendants are the same as or the successor in interest to Local 118, all to the irreparable injury of Local 118, the members thereof, and the International.

29. The said wrongful acts by the individual defendants are calculated to and will in fact dissipate the collective bargaining strength of Local 118 and its members, and will cause loss of prestige and in all other respects diminish the normal and effective operation of the Local and its members.

30. Unless promptly restrained by this Court the unlawful acts and threatened acts of the defendants as hereinabove set forth will cause the plaintiffs to sustain material, substantial, and irreparable injury in that their valuable and fundamental interest in the preservation of the name "Local 118" and the funds and property of said Local are placed and continue to be placed in peril by the acts of the individual defendants.

31. The plaintiff has duly performed all the terms and conditions of the International Constitution and laws of the International on his part to be performed.

11 32. By reason of the acts hereinabove complained of, Local 118, the International, and plaintiff who is Special Trustee of Local 118 and Acting Secretary-Treasurer of the International, have suffered substantial damages and have and will continue to suffer damages in a sum estimated to be in excess of \$32,000, although the amount cannot at present be exactly ascertained, and will continue to suffer further damages unless the acts complained of herein are either discontinued or enjoined.

33. The Constitution of the International, in Article XIV, Section 8, provides in part as follows:

"Should a local union dissolve, secede, or have its charter revoked all its money and property shall revert to the ownership of the International Union, and the International Secretary-Treasurer may authorize, in writing, a member of a nearby local or a representative to take charge of and turn same over to the International Union."

34. The defendants, other than the Banks, and each of them, in concert with others, conspired to perform and did perform acts purporting to effect a secession, disaffiliation, and/or dissolution of the said Local 118 from the International Union.

35. Pursuant to said Article XIV, Section 8, of the International Constitution, plaintiff, Peter H. Olson, Acting Secretary-Treasurer of the International, has been and is authorized to take charge of and turn over to the International all the money, property, and assets of said Local 118 upon the dissolution or secession of said Local 118 from the International.

36. The defendants have violated and are continuing to violate Article XIV, Section 8, of the International Constitution by having purportedly seceded, dissolved, and/or disaffiliated and by failing and re-
12 fusing to surrender, release, and deliver to the plaintiff all the property, records, books, funds, and other assets of Local 118, the title to which reverted to and vested in the International.

37. If the relief herein requested is not granted, immediate and irreparable injury will be caused the plaintiff, Peter H. Olson, the International, and its members in that:

a) The aforesaid money and property will be dissipated and misused in violation of plaintiff's property rights therein;

b) the effective functioning of the International and its administrative subdivisions will be disrupted and impeded;

c) the International and its administrative subdivisions will suffer grave loss of effectiveness and consequent diminution of their organizational and collective bargaining position.

38. The plaintiff has no adequate remedy at law. Irreparable damage and injury have already been caused to Local 118, the International, and plaintiff by the individual defendants' withdrawal and mis-use of the funds, assets, and property of Local 118. If such actions by the individual defendants are permitted to continue without judicial restraint, ultimate recourse may be wholly futile, the assets of Local 118 dissipated, and the individual defendants without any financial means to meet a judgment. For these reasons an injunction should be issued as prayed herein and, pending the final determination of this action, a temporary restraining order and a preliminary injunction.

13

PRAAYER

WHEREFORE plaintiff prays:

1. That the defendants the Banks, and each of them, and their respective officers, agents, employees, representatives, servants, and attorneys, be perpetually restrained and enjoined:

From transferring, paying out, distributing, or disposing to the defendants, other than the Banks, or to any of them, or to their agents, servants, employees, attorneys, or confederates, any of the funds, assets, moneys, property, or accounts on deposit, or any and all other assets or properties of whatever description in said defendants' possession or control and belonging to Local 118, regardless whether such assets, funds, accounts, moneys, or property are in the name of Local 118 or in any other name to which they may have been changed by any of the defendants;

and that said defendants the Banks, and each of them, be ordered and directed:

To pay over, transfer, and deliver to the plaintiff all the funds, assets, properties, and accounts on deposit and any and all other assets and properties of whatever description held by said defendants in the name of Local 118, or in any other name in which the funds, assets, properties, and accounts of Local 118 may be held.

2. That the defendants, other than the Banks, and each of them, and their respective associates, agents, servants, employees, representatives, and attorneys and all other persons agreeing or conspiring with said defendants and all other persons whomsoever to whom notice hereof shall come, be perpetually enjoined and restrained:

14 a) From using, transferring, paying out, distributing, or disposing of all or any part of the funds, assets, and other properties, and the evidence thereof, in said defendants' possession or control belonging to Local 118, regardless of any change in name thereof by any of the defendants;

 b) From holding and using the office equipment, files, membership lists, records, books, documents, papers, bank statements, savings bank passbooks, bonds or any other property of Local 118 in said defendants' possession or control;

 c) From representing to members of Local 118, to employers, to the Banks, or to the public generally that the individual defendants are members or officers of Local 118;

 d) From representing to members of Local 118, to employers of such members, or to the public generally that said Local 118 is no longer an affiliate of the International;

 e) From using the name "Local 118", or part of said name, as the name of any other labor union, labor organization, club, or association whether in existence now or hereafter to be organized;

 f) From collecting or receiving dues from members of Local 118 directly or from employers under dues check-off authorizations;

 g) From interfering in any and all manners and means with the activities, functions, rights, duties, relationships, and affiliates of the plaintiff, of the International, and of Local 118, and of all others similarly situated with them;

15 h) From agreeing, conspiring, or combining and from continuing such agreement, conspiracy or combination and from doing any and all other acts whatever in furtherance

thereof, as set forth in this complaint, to the injury or damage of the plaintiff, the International, Local 118, and those similarly situated with them.

3. That the individual defendants be ordered, adjudged, and decreed:

- a) To render a full and complete accounting to the plaintiff of all moneys and other properties of Local 118 received and disbursed or disposed of since March 1, 1957, and of the location and value of all funds, assets, accounts, books, records, office equipment, files, membership lists, savings bank passbooks, bonds, and other property of Local 118, and of any and all property into which such property may have been converted;
- b) To hold the funds, assets, accounts, books, records, office equipment, files, membership lists, savings bank passbooks, bonds, and all other properties of whatever description, and the evidence thereof, of Local 118, and the properties into which such may have been converted, as trustees for the benefit of said Local 118, or in the alternative as trustees for the Acting Secretary-Treasurer of the International;
- c) To transfer, pay over, and deliver all of the aforesaid properties of Local 118 to the plaintiff as Special Trustee of Local 118 or as Acting Secretary-Treasurer of the International.

16 4. That the plaintiff recover from the individual defendants \$32,000.00, plus such other sums as may be assessed in this action as and for damages, together with interest and costs.

5. That a temporary restraining order and a preliminary injunction of the same tenor and effect be issued during the pendency of this action.

6. That the Court grant such other and further relief as it may deem just and proper in the premises.

/s/ Abraham J. Harris

/s/ John V. Long

/s/ James H. Heller

Sher, Oppenheimer & Harris
1026 Woodward Building
Washington 5, D. C.

1026 Woodward Building
Washington 5, D. C.
Attorneys for Plaintiff

Of Counsel.

17 DISTRICT OF COLUMBIA: ss.:

PETER H. OLSON, being duly sworn, deposes and says:

That he is a Vice-President of the Bakery and Confectionery Workers' International Union of America and Special Trustee of Local 118, Bakery and Confectionery Workers' International Union of America; that he is also Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America; and that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

/s/ Peter H. Olson

Jurat, dated January 3, 1958.

(SEAL)

/s/ Mildred M. Boyd
Notary Public

18

EXHIBIT "A"

Constitution of the Bakery and Confectionery
Workers' International Union of America:
1956 - 1961

See Appendix "C" to Brief for Appellant.

20 [Filed January 4, 1958]

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER

I

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves the Court for a preliminary injunction against defendants, and each of them, their officers, agents, servants, employees, and attorneys and all other persons in active concert or participation with them who receive actual notice of such injunction, as follows:

1. That the defendants, the Banks, and each of them, and their respective officers, agents, employees, representatives, servants, and attorneys, be perpetually restrained and enjoined:

From transferring, paying out, distributing, or disposing to the defendants, other than the Banks, or to any of them, or to their agents, servants, employees, attorneys, or confederates, any of the funds, assets, moneys, property or accounts on deposit, or any and all other assets or properties of whatever description in said defendants' possession or control and belonging to Local 118, regardless whether such assets, funds, accounts, moneys, or property are in the name of Local 118, or in any other name to which they may have been changed by any of the defendants;

and that said defendants the Banks, and each of them, be ordered and directed:

21 To pay over, transfer, and deliver to the plaintiff all the funds, assets, properties, and accounts on deposit and any and all other assets and properties of whatever description held by said defendants in the name of Local 118, or in any other name in which the funds, assets, properties, and accounts of Local 118 may be held.

2. That the defendants, other than the Banks, and each of them, and their respective associates, agents, servants, employees, representatives, and attorneys and all other persons agreeing or conspiring with said defendants and all other persons whomsoever to whom notice hereof shall come, be perpetually enjoined and restrained:

a) From using, transferring, paying out, distributing, or disposing of all or any part of the funds, assets, and other properties, and the evidence thereof, in said defendants' possession or control belonging to Local 118, regardless of any change in name thereof by any of the defendants;

b) From holding and using the office equipment, files, membership lists, records, books, documents, papers, bank

statements, savings bank passbooks, bonds or any other property of Local 118 in said defendants' possession or control;

c) From representing to members of Local 118, to employers, to the Banks, or to the public generally that the individual defendants are members or officers of Local 118;

22 d) From representing to members of said Local 118, to employers of such members, or to the public generally that said Local 118 is no longer an affiliate of the International;

e) From using the name "Local 118," or part of said name, as the name of any other labor union, labor organization, club, or association, whether in existence now or hereafter to be organized;

f) From collecting or receiving dues from members of Local 118 directly or from employers under dues check-off authorizations;

g) From interfering in any and all manners and means with the activities, functions, rights, duties, relationships, and affiliates of the plaintiff; and of the International, and of Local 118, and of all others similarly situated with them;

h) From agreeing, conspiring, or combining and from continuing such agreement, conspiracy or combination and from doing any and all other acts whatever in furtherance thereof, as set forth in this complaint, to the injury or damage of the plaintiffs, the International, Local 118, and those similarly situated with them.

23 3. That the individual defendants be ordered, adjudged, and decreed:

a) To hold the funds, assets, accounts, books, records, office equipment, files, membership lists, savings bank passbooks, bonds, and all other properties of whatever description,

and the evidence thereof, of Local 118, and the properties into which such may have been converted, as trustees for the benefit of said Local 118, or in the alternative as trustees for the Acting Secretary-Treasurer of the International;

b) To transfer, pay over, and deliver all of the aforesaid properties of Local 118 to the plaintiff as Special Trustee of Local 118 or as Acting Secretary-Treasurer of the International.

* * * * *

25

Sher, Oppenheimer & Harris
1026 Woodward Building
Washington 5, D. C.
Of Counsel

/s/ Abraham J. Harris

/s/ John V. Long

/s/ James H. Heller
1026 Woodward Building
Washington 5, D. C.

Attorneys for Plaintiff

27 [Filed January 4, 1958]

AFFIDAVIT

District of Columbia, ss:

PETER H. OLSON, being duly sworn, deposes and says:

1. I am a Vice President of the Bakery and Confectionery Workers' International Union of America (hereinafter referred to as the "International") and by action of its General Executive Board was duly designated as Special Trustee of Local No. 118, effective December 17, 1957. I am also the Acting Secretary-Treasurer of the International, having been so designated by the International's General Executive Board on March 8, 1957.

2. I am familiar with all the facts hereinafter set forth and submit this affidavit in support of plaintiff's motion for a temporary restraining order and for a preliminary injunction to prevent immediate and irreparable injury threatened by the continuance of defendants' activities complained of in the complaint. I am also familiar with the facts alleged in the complaint, which I have separately verified under oath, and those

facts are made part of this affidavit as fully as if set forth herein.

3. On December 17, 1957, by unanimous vote of the General Executive Board, I was appointed Special Trustee of Local 118 on the ground that an emergency existed in that the General Executive Board has substantial reason to believe that the affairs of said Local Union were and are conducted in such manner as to jeopardize the rights and interests of the members of said Local Union, the Local Union, and the International Union.

4. Upon my appointment, I was vested with all the functions and authority of the officers of said Local 118. I was also charged with the duty and authority to take such action as was deemed necessary to preserve the rights and interests of the members of said Local Union and of the International Union. Included therein was the duty and authority to take possession of the funds, books, papers, and other property of said Local Union and to institute all necessary action to recover same
28 if not delivered as requested.

5. Article XX, Section 4, of the International Constitution, pursuant to which I was appointed Special Trustee of Local 118, as aforesaid, provides:

"Sec. 4(a) The authority of the General Executive Board to appoint special trustees over subordinate bodies may be exercised whenever the General Executive Board has substantial reason to believe that the affairs of the subordinate body are conducted in such a manner as to jeopardize the rights and interests of a member of that body, the local union, or of the International Union.

(b) Because of the emergency nature of this power a trustee may be appointed without previous notice or hearing. However, immediately, upon the appointment of a special trustee the International President shall notify the officers of the affiliate involved (such notice may be given by telegram, ordinary mail, registered mail or telephone) that a hearing shall be held by the General Executive Board at which interested parties may be heard on the subject of retaining the special trusteeship. Such hearing shall take place not sooner than ten days and not later than twenty days after the appointment of the special trustee. If, upon such hearing, the General Executive Board decides that the subordinate affiliate should continue under the trusteeship, the subordinate affiliate shall have an appeal to the Convention

in accordance with the provisions of this article. If, upon such hearing, it is decided that the subordinate affiliate does not require a special trusteeship, the subordinate affiliate and its officers shall revert to their former status and continue without trusteeship.

(c) Upon the appointment of a special trustee, the functions of all the officers of the subordinate body shall terminate and pass to the special trustee, subject to the direction and approval of the General Executive Board. The special trustee may, with the approval of the General Executive Board, reappoint former officers or appoint new temporary officers, who otherwise meet all of the qualifications to hold such office as set forth in this Constitution, in their place; and he shall take such other action as he deems necessary for the preservation of the rights and interests of the members of the subordinate affiliates and of the International Union. He shall submit periodic and complete reports of his actions and of the affairs of the subordinate affiliate to the General Executive Board.

29 (d) The special trustee shall take possession of all the funds, books, papers, and other property of the subordinate affiliate and tender a receipt for same. He shall institute all necessary action to recover money or other properties of the subordinate affiliate.

(e) The special trustee shall operate for whatever time is necessary not in excess of one year, but may be continued beyond one year if, after further formal hearing, the General Executive Board so orders. Whenever self government is restored, the special trustee shall return all funds, books, papers and other property in his possession to the subordinate affiliate."

6. The International is a labor union with headquarters located in the District of Columbia. Its membership is composed of more than 150,000 workers employed in the bakery and confectionery industries.

7. The membership of the International is contained within a number of administrative subdivisions or local unions chartered by the International as provided for by the International constitution, of which there are presently about 305 throughout the United States and Canada.

8. Local 118, whose members consist of workers in the bakery and confectionery industries in Washington, D.C., received a charter from the International and agreed to be bound by the constitution and laws of the International. (A copy of such constitution is annexed to the

Complaint herein and made a part thereof as Exhibit "A".)

9. Article 17, Section 3, of the International Constitution provides as follows:

"Membership in the International Union constitutes an acceptance by each member to be bound by the provisions of the Constitution, the oath of membership and the laws, policies and directives of the International Union and the local unions. It is the duty and obligation of every member to report to the General Executive Board every infringement of the Constitution by any subordinate body or member or officer thereof."

30 10. Section 4 of Article 17 further sets forth the oath that each member of a local must take in order to be accepted to membership. It reads in full as follows:

"After having successfully met the application requirements and been accepted to membership, candidates shall be required to assume the following obligation, which they shall repeat when read to them by the presiding officer at the meeting in which they are initiated:

"I, . . . , solemnly promise . . . to maintain the Constitution of the International Union . . . and the By-Laws of this or any other Local Union . . . with which I may become affiliated . . . as they are now constituted or may later be changed.

"I promise to maintain the dignity of this organization . . . and to further its objectives.

"I furthermore promise that I will not join . . . or render aid or comfort to any organization . . . hostile to the Bakery and Confectionery Workers' International Union of America . . . and that I will keep secret the proceedings of this Union.

"I also promise that I will, whenever possible, . . . purchase only Union Label goods . . . and that I will patronize only those establishments . . . that display Union cards and Union service buttons . . . and that I will aid and assist in bringing to justice . . . any member violating this obligation."

11. Article 20, Section 4, quoted above, provides the machinery by which a Special Trustee may be appointed over subordinate bodies in the event of an emergency such as has occurred in the instant case. The Court is respectfully referred to the International Constitution in this connection.

12. In March of 1957, a certain dissident group, composed in part of and supported by the individual defendants in this action, banded together to form a so-called "Committee to Preserve Integrity in the Bakery and Confectionery Workers' International Union of America", hereinafter sometimes referred to as the "Committee." The purpose of this group was ultimately to effect a secession of Local 118 and other like administrative subdivisions from the International in plain and unqualified violation of their membership obligations and in breach of the International Constitution. Thereafter, this "Committee" devised many means and devices to accomplish this purpose. During the subsequent

31 months the defendants individually and under the guise of this "Committee" entered into a course of conduct which was calculated to gain control of Local 118 for their own benefit, and to deprive the members and the International of the property, money, and other rights to which they were entitled, including collective bargaining and grievance machinery established through the efforts of Local 118 and the International. Local 118 has approximately \$32,000.00 in its treasury which under the Constitution of the International belongs to Local 118 existing as a legally authorized administrative subdivision of the International or, in the alternative, to the International. (A copy of the latest financial report submitted to the International is attached hereto and marked Exhibit "A".)

13. In furtherance of their avowed purpose, the individual defendants and the so-called "Committee" authorized a certain Daniel E. Conway to apply for a new union charter from the AFL-CIO. This charter was granted on December 12, 1957, and authorized Conway to create a new rival and hostile international union to be known as the American Bakery and Confectionery Workers' International Union.

14. Simultaneously with this action, the "Committee" composed and disseminated to a large number of locals of the International a certain "suggested resolution" together with detailed instructions. A copy of the "suggested resolution" and detailed instructions is annexed hereto, made a part hereof, and marked "Exhibit "B." The purpose of the

"suggested resolution" and instructions was to supply these and other dissidents within locals with the actual language method of enacting of a resolution of "disaffiliation" from the International. The "suggested resolution" further provides that all property held in the name of the local and owned by the International pursuant to the constitution should "follow the decision of the majority".

32 The "suggested resolution" further provides the language of affiliation with the American Bakery and Confectionery Workers International Union.

15. A membership meeting of Local 118 was called for December 21, 1957, by the individual defendants. I am informed and believe that the proposals put before the members of Local 118 who attended that meeting faithfully followed the pattern outlined in the "suggested resolution."

16. Of a total membership of approximately 1100 in Local 118, only about 700 are reported to have attended the meeting which passed the resolution of "disaffiliation" submitted. No referendum of the total membership was or has ever been taken.

17. The Constitution of the International does not authorize the purported action of withdrawal, secession, or disaffiliation.

18. At the same meeting of December 21, 1957, and in strict obedience to the "suggested resolution" the individual defendants caused a resolution to be passed to the effect that Local 118 should affiliate with the rival and hostile American Bakery and Confectionery Workers' International Union.

19. The individual defendants now claim that the new "Local 118" is the true and lawful successor in interest to Local 118 of the International.

20. Thus the individual defendants have illegally consummated two of the three objectives set forth in the "suggested resolution." They have attempted to disaffiliate from the International and have attempted to affiliate with a rival, dual, and hostile union. The third step set forth in the "suggested resolution" is the misappropriation of the money, name,
33 and property of Local 118 and the International. The individual

defendants have already acted and will continue to take action to effectuate this aspect of their plan. They are proceeding to disburse moneys and in all respects take over possession and control of the assets and affairs of Local 118, notwithstanding their present lack of authority to perform such acts.

21. Confronted by this emergency, the General Executive Board of the International, on December 17, 1957, appointed me Special Trustee to take over all the property, funds, and affairs of Local 118. On the same date, the President of the International Union gave telegraphic notice to the individual defendants of my appointment as Special Trustee. I promptly, by telegram sent to each of the individual defendants on December 20, 1957, demanded that they vacate their positions as officers of Local 118 and forthwith turn over to plaintiff all the property, funds, and assets of Local 118, as provided in the Constitution of the International. A copy of this demand is hereto attached, marked Exhibit "C".

22. This demand was ignored and disobeyed by the individual defendants. Indeed, by letter dated December 20, 1957, defendant Oriental Building Association advised plaintiff that Local 118's savings account with it was closed out on December 18. According to the last financial report filed by Local 118 with the International (see Exhibit "A"), as of November 1, 1957, Local 118 had over \$8300.00 in said savings account. Likewise, by telegram dated December 20, defendant Washington Permanent Building Association advised plaintiff that the entire funds of Local 118, amounting to \$7129.77, was withdrawn on December 18 by defendants McClosky and Hellwig.

23. Plaintiff has reason to believe that other funds of Local 118 have likewise been improperly dealt with and misappropriated by the individual defendants.

34 24. Plaintiff does not know to what bank or banks the individual defendants have transferred any of the funds of Local 118, except that plaintiff has been informed and believes that the individual defendants, or some of them, have opened an account in the name of Local 118 with the defendant Prudential Building Association.

25. Plaintiff is thus faced with a situation whereby the funds and assets, collective bargaining rights, name, integrity, prestige, and morale of Local 118 will be wasted, dissipated, and misused unless this Court grants the relief sought by the complaint herein.

/s/ Peter H. Olson

[JURAT, dated January 3, 1958.]

37

SUGGESTED RESOLUTION

EXHIBIT "B"

WHEREAS, a fundamental condition of the basic compact and relationship between the Bakery and Confectionery Workers International Union of America and its individual members and subordinate bodies was and is that the financial resources of said Union constitute a Trust to be used solely for legitimate and honorable trade union purposes; and
 WHEREAS, the said Union, in flagrant breach of its fiduciary obligation as a trustee, has permitted the unlawful diversion of such funds for the personal use and pleasure of its president and others; and
 WHEREAS, a basic understanding and contract between the Bakery and Confectionery Workers International Union of America and its individual members and subordinate bodies was and is that affiliation with the AFL-CIO and with the AFL prior to the merger would not be jeopardized or surrendered by unethical or corrupt conduct; and
 WHEREAS, the said Union in violation of the fundamental understanding and agreement with its membership and its subordinate bodies, has been expelled by the AFL-CIO as dominated by corrupt influences; and
 WHEREAS, the membership of this Local Union duly authorized delegates to participate in a meeting called by the Committee To Preserve Integrity in the Bakery and Confectionery Workers International Union of America in Atlantic City, New Jersey, on December 6-10, 1957, which meeting enthusiastically and unanimously supported said Committee in adhering to the fundamental commitments to maintain a trade union organization for bakery and confectionery workers free from any taint or corruption, and in honorable affiliation with the AFL-CIO; and

WHEREAS, the AFL-CIO on December 12, 1957, did charter the American Bakery and Confectionery Workers International Union

Now, therefore, be it resolved:

1. That Local _____ hereby affirms and declares that the Bakery and Confectionery Workers International Union of America has violated the fundamental and basic terms and conditions of its relationship, understanding, compact and contract with its members and locals and has by its own actions destroyed the bonds of affiliation between itself and this Local, and that Local _____ hereby disaffiliates from the Bakery and Confectionery Workers International Union of America; and
2. That all property of Local _____ of any nature whatsoever shall follow the decision of the majority; and
3. That the local officers take all steps necessary to protect the property and assets of the Local; and
4. That all local officers shall continue in their present status; and
- 38 5. That Local _____ hereby affiliates with the American Bakery and Confectionery Workers International Union, AFL-CIO, and directs its President forthwith to apply to said Union for a Local Union Charter, and to take all steps necessary to consummate and to effectuate affiliation with the American Bakery and Confectionery Workers International Union, AFL-CIO.

SUGGESTED PROCEDURES

1. Notice of Meeting:

Choose a meeting date which will be as soon as possible, but not so near that you can't give adequate notice. Your notice should be given as far in advance as possible and should state the purpose of the meeting--disaffiliation and affiliation. The notice should be posted in the usual places (shop and bulletin boards) and should be up for at least the length of time a regular meeting notice must be posted according to the Local Constitution and by-laws. It is also a good idea to follow up the posted notice with letters or post cards to the members--or leaflets at the shops. Try and get as large an attendance as is possible. The notice should read something like this:

"Attention all members of Local ____: At a special meeting of the Local (or at the next regular meeting of the Local) to be had at _____ at _____ o'clock on the _____ day _____, 1957, the matters of the expulsion of the Bakery and Confectionery Workers International Union of America by the AFL-CIO, and the disaffiliation of this Local from the Bakery and Confectionery Workers International Union of America, and its affiliation with the American Bakery and Confectionery Workers International Union, AFL-CIO, will be discussed and acted upon."

"Every member is urged to attend this important meeting."

2. The Meeting:

It is important that full and free discussion be permitted all members at this meeting. Of course, leaders in the move for clean unionism should be prepared to lead floor discussions. Careful records should be kept of this meeting, as such records may become evidence at a later date. These records should include full and complete minutes and an accurate attendance record and an accurate record of the vote. It is important that the meeting be conducted by the President as an official meeting.

A resolution which sets forth the necessary action to be taken is attached for your guidance and use.

3. After the Meeting:

Immediately after the disaffiliation meeting, notice should be sent to employers, along the lines of the enclosed suggested letter.

4. If the employer refuses to cooperate, it will be necessary to use the procedures of the NLRB. We will advise you on the necessary steps to be taken.

39 5. Stay in close contact with your new International Officers and keep them apprised of all developments.

Sincerely and Fraternally yours,
Daniel E. Conway, President

SUGGESTED LETTER TO EMPLOYERS

Gentlemen:

On December 12, 1957, the AFL-CIO at its convention in Atlantic City, New Jersey, expelled and disaffiliated the Bakery and Confectionery Workers International Union of America. The Convention thereupon issued a charter of affiliation to the American Bakery & Confectionery Workers International Union, AFL-CIO.

On December _____, 1957, the members of Local No. _____ voted by an overwhelming majority to affiliate with the American Bakery and Confectionery Workers International Union, AFL-CIO. As you know, your collective bargaining contract is with this union, Local No. _____, which is the duly designated representative of a majority of your employees. We shall continue to recognize the contract between your Company and this Local and expect you to do likewise. Any other action would be in plain derogation of the contract. Of course, the checkoff continues to the Local.

We count on your continuing cooperation and shall be pleased to meet and discuss with you any matters growing out of these recent events.

Very truly yours,

40 AMERICAN BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION, AFL-CIO

P. O. Box 1758
Washington 13, D.C.
December 16, 1957

Dear Brothers and Sisters:

This letter is being sent to all locals who participated in the Atlantic City meeting. That meeting proceeded in a wonderful spirit of unity and determination, and I wish you could all have been there. Your delegates will be reporting to you.

Support for our work has been expanding. Now that the AFL-CIO has granted us a charter, the issue is so clear that no one can mistake it. Once again, we shall have an honest and strong union for bakery workers.

For obvious reasons it is desirable that your local affiliate with the new union as soon as possible. Attached you will find a suggested procedure, a suggested resolution and a suggested letter to employers. These should of course be taken only as guides. They may be used as they are but should be changed to fit any particular problem or situation that may apply only to your Local and membership.

If you have any questions, please get in touch with me.

Sincerely and Fraternally yours,

Daniel E. Conway
President

41 [Filed January 4 , 1958] EXHIBIT "C"
WESTERN UNION SENDING BLANK

Call Letters: GBT

Charge to: Bkry & Conf Wkrs' Int'l. Union

December 20, 1957

The General Executive Board of the Bakery and Confectionery Workers' International Union of America, by Proposition #4204, designated the undersigned as Trustee of Local No. 118, under and by virtue of the International Constitution. Accordingly, you are herewith directed to vacate your position as an officer of said local union, to cease holding yourself out as occupying same or vested with any authority in connection therewith, and forthwith to effect delivery of all of said local union's funds, contracts and all other property in your possession or under your control to the undersigned at the Washington office of the International Union, 1145 19th Street, N. W. You are hereby also given notice that a hearing in connection with said Trusteeship will be held at 2:00 p. m. , January 3, 1958, at 1145 19th Street.

WESTERN UNION SENDING BLANK

Call Letters: GBT Charge to: Bkry & Conf. Wkrs Int'l Union
Washington, D. C., pursuant to Article XX, Section 4, of the Inter-
national Constitution.

Peter H. Olson
Special Trustee of Local 118

Send above message to the following:

Charles Miller, President
1400 Oglethorpe Street, N. W.
Washington, D. C.

C. B. McClosky, Cor. Secretary
635 F Street, N. W.
Washington, D. C.

Milton Link, Vice President
3104 E Street, S. E.
Washington, D. C.

Adolph Hellwig, Secretary-
Treasurer
635 F Street, N. W.
Washington, D. C.

(Cont'd.)

WESTERN UNION SENDING BLANK

Call Letters: GBT Charge to: Bkry & Conf Wkrs' Int'l Union

Harry Lockwood, Trustee
242 Peabody Street, N. W.
Washington, D. C.

James May, Trustee
6444 Lanham Lane
Washington 12, D. C.

James Ax, Trustee
4206 Mt. Rainier Avenue
Mt. Rainier, Maryland

71 [Filed January 14, 1958]

ANSWER OF
THE SECOND NATIONAL BANK OF WASHINGTON
TO
PLAINTIFF'S MOTIONS
FOR
TEMPORARY RESTRAINING ORDER
AND
PRELIMINARY INJUNCTION

The Second National Bank of Washington, one of the defendants herein, having been served personally on January 7, 1958, by the plaintiff with the Summons and Complaint herein and Motions for Temporary Restraining Order and Preliminary Injunction, and affidavits and exhibits,

etc., in support thereof, and having received by mail on January 8, 1958 a service copy from counsel for the plaintiff of the Order of this Court herein dated January 7, 1958, for answer to the said motions respectfully presents:

1. It has no interest in the controversy between the other parties to this action and no claims to assert herein.
- 72 2. Prior to service upon it of the Complaint and other papers and Order of Court referred to above in this cause and prior to receipt by it on December 20, 1957 of telegram of that date from plaintiff herein, it had a savings account in the name of Baker's Local Union #118 with a balance therein on December 18, 1957 of \$3,000.00. On that date, it honored in regular course of business a withdrawal order against that account in the sum of \$2,999.00 signed by Adolf Hellwig and Chas. B. McClosky in the name of the said Union, in accord with evidence of their authority then on file and in force with the said Bank, and in exchange delivered to them the said Bank's Cashier's Check No. S99243 in the said sum dated December 18, 1957, payable to the order of Bakers Local Union #118, leaving in the said account a balance of \$1.00, which amount has since continued to be and presently remains the balance of the said account.

3. The said Bank is without knowledge or information sufficient to form a belief as to any other assets of the said Union.

WHEREFORE, this defendant, The Second National Bank of Washington, respectfully requests that this Honorable Court enter herein an order denying as to it the Motions herein for Temporary Restraining Order and Preliminary Injunction.

COLLADAY & COLLADAY

/s/ E. F. Colladay

/s/ D. C. Colladay

/s/ James R. Stoner

1331 G Street, N. W., Washington 5, D. C.,
Attorneys herein for The Second National Bank of
Washington, one of the defendants.

COLLADAY & COLLADAY

By /s/ D. C. Colladay
Attorneys herein for
The Second National Bank of
Washington, one of the
defendants.

[Filed January 16, 1958]

ANSWER OF
WASHINGTON PERMANENT BUILDING ASSOCIATION
TO PLAINTIFF'S MOTION FOR TEMPORARY RE-
STRAINING ORDER AND PRELIMINARY INJUNCTION

The Washington Permanent Building Association, one of the defendants herein, having been served personally on January 7, 1958, by the plaintiff with the Summons and Complaint herein and Motions for Temporary Restraining Order and Preliminary Injunction, and affidavits and exhibits, etc., in support thereof, and having received by mail on January 8, 1958 a service copy from counsel for the plaintiff of the Order of this Court herein dated January 7, 1958, for answer to said motions respectfully presents:

1. It has no interest in the controversy between the other parties to this action and no claims to assert herein.

2. This defendant Washington Permanent Building Association as a defense to the relief sought against it, states that prior to service upon it of the Complaint and other papers and Order of Court referred to above in this case and prior to receipt by it on December 20, 1957, of telegram of that date from plaintiff herein, it had a share account in the name of Baker's Local Union No. 118, with a balance therein on December 18, 1957 of \$7, 129. 77. On that date, namely, December 18, 1957, it honored
80 in regular course of business a withdrawal order against that account in the sum of \$7, 129. 77 signed by Adolph Hellwig and Chas. B. McClosky in the name of the said Union, in accordance with evidence of their authority then on file and in force with said Association, and in exchange delivered to them a check of the Association in said sum dated December 18, 1957, payable to the order of Baker's Local Union 118, which closed said share account.

3. The said Association is without knowledge or information sufficient to form a belief as to any other assets of the said Union.

WHEREFORE, the defendant, Washington Permanent Building Association respectfully requests that this Honorable Court enter herein

an order denying as to it the Motions herein for Temporary Restraining Order and Preliminary Injunction.

WASHINGTON PERMANENT BUILDING
ASSOCIATION

By: /s/ Julius A. Maedel
President

/s/ Edwin Shelton

Attorney for Washington Permanent
Building Assn.
1511 K Street, N. W.
Washington 5, D. C.

90 [Filed January 22, 1958]

MOTION TO DISMISS COMPLAINT

Defendants Miller, Link, McClosky, Hellwig, Lockwood and May
move the Court as follows:

1. To dismiss the action for failure to join indispensable parties.
2. To dismiss the action for failure to state a claim upon which relief can be granted, all of which more fully appears in the Memorandum of Points and Authorities in support of this motion attached hereto.

Respectfully submitted,

/s/ Henry Kaiser

/s/ Isaac N. Groner

/s/ Stephen I. Schlossberg

Counsel for Defendants
Link, Miller, McClosky,
Hellwig, Lockwood and May.

Of Counsel:

Van Arkel & Kaiser
1701 K Street, N. W.
Washington, 6, D. C.

113 [Filed January 22, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER H. OLSON,

Plaintiff,

vs.

CHARLES MILLER, ET AL.,

Defendants.

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:
:
:

Civil Action No. 20-58

AFFIDAVIT OF CHARLES B. McCLOSKEY

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss:

CHARLES B. McCLOSKEY, being duly sworn, deposes and says:

1. I am Business Agent and Recording Secretary of Bakers Union 118, Washington, D.C., and have held this position, through annual election of union officers conducted by secret mail ballot, for over 25 years. I am a defendant in the above-captioned suit, which is a frank attempt to obtain the funds, assets, property, name and success of Bakers Union 118.

2. By virtue of my position and the performance of my duties as an officer of Bakers Union 118, I am directly familiar with the facts and circumstances which led up to the institution of this suit. I make this affidavit not only on my own behalf, but also on behalf of defendants Miller, President of Bakers Union 118; Link, Vice President; Hellwig, Financial Secretary-Treasurer and Office Manager; Lockwood, Chairman of the Trustees; and May, a Trustee.

I.

3. Bakers Union 118 is now and has been since December 21, 1957 (prior to the filing of this suit on January 4, 1958), Local 118 of the American Bakery and Confectionery Workers' International Union (herein-

114 after referred to as "ABC"), an International Union affiliated with and chartered by the American labor movement in the form of the American Federation of Labor and Congress of Industrial Organizations (hereinafter referred to as AFL-CIO"). Formerly, Bakers Union 118 was

affiliated with the Bakery and Confectionery Workers' International Union of America (hereinafter referred to as "BCW").

4. The brazen and exposed corruption of the BCW was the sole cause of the disruption and termination of the relationship between it and Bakers Union 118. Prior to the time of the alleged imposition of "trusteeship" by the BCW on Bakers Union 118, which the complaint states occurred on December 17, 1957, the corruption dominating BCW had been publicly and unanswerably demonstrated and proved. A brief account of the pertinent events follows:

5. On March 3, 1957, charges were filed, within the BCW, against BCW's President James G. Cross and a Vice President, George Stuart. The charges, filed by then Secretary-Treasurer Curtis R. Sims, were in essence those that were investigated and proved by the United States Senate Special Committee on Improper Activities in Labor or Management (hereinafter referred to as the "McClellan Committee"), and by the AFL-CIO, as appears more fully below.

6. Plaintiff Olson was at that time, and has been throughout the events covered herein, a member of the General Executive Board of the BCW.

7. The charges against Cross and Stuart were "heard" before that Board on March 7-8, 1957. Despite the documentation and proof which was put before it, that Board, by a divided vote, with plaintiff in the majority, acquitted both Cross and Stuart on all charges. Immediately thereafter, again with plaintiff himself a participant, the Board suspended Secretary-Treasurer Sims.

115 8. Plaintiff personally benefitted by his votes, as follows. After Sims was suspended, the Board, again with plaintiff's support, created a new position, "Acting Secretary-Treasurer", not to be found in and not authorized by the BCW Constitution. Plaintiff profited personally from these corrupt acts by being himself appointed to fill this purported position.

9. Plaintiff was protected in this position by these subsequent illegal and improper actions of the Board, in which he participated and voted with the majority. On March 27, 1957, Sims was convicted of charges against him brought by Cross. These charges actually amounted to incriminating Sims for exposing and making public the documented charges of gross corruption and breach of fiduciary duty which had been lodged against Cross and Stuart. Sims was suspended for 90 days on March 27; and again on June 21; and was finally expelled from office on September 16, 1957.

10. On March 30, 1957, Vice President Stuart resigned his union office. He was obviously resigning under fire, and his resignation was a clear sign to the world of his guilt. Accordingly, in later appearances before the Senate Special Committee and the AFL-CIO Ethical Practices Committee, Cross and the BCW attempted to take credit for forcing Stuart to resign because of his obvious corruption. At the time of his resignation, however, the BCW issued a press release, saying that Stuart had long planned to resign, and that his resignation had nothing to do with the charges of corruption.

11. The McClellan Committee was obviously not satisfied with the manner in which the BCW Board, with plaintiff himself a leading participant, had disregarded or attempted to cover up the corruption which had been exposed. Hearings on the BCW were held before this Committee on June 6, 7, 18, 19, 20 and July 16, and 17, 1957. The official printed record of those hearings is attached as Exhibit 1 to this Affidavit and is
116 incorporated herein as though repeated in full.

12. Exhibit 1 contains the most complete account of the BCW corruption which is as yet available. Stuart was called before the Committee, but answered no questions as he consistently invoked the Fifth Amendment. Through the testimony of other witnesses, it was proved that he had participated, together with Cross and certain other BCW officials, in diverting thousands of dollars of Union funds to personal use. A good deal of the corruption involved funds, assets and property of BCW Locals which were under trusteeship. The misconduct which is

proved on this record is revolting and shocking, and is obviously a violation of the provisions of the BCW Constitution.

13. BCW had long been affiliated with the AFL, and affiliated with the AFL-CIO when that merged organization was formed in December, 1955. The AFL-CIO Constitution prohibits and condemns corruption; and establishes an Ethical Practices Committee to investigate and take appropriate action in any case where any Union is alleged to be dominated by corrupt influences.

14. Pursuant to these provisions, this Committee investigated the BCW. Hearings were held before this Committee on May 7, July 31 and August 1, 1957. Plaintiff himself was present at these hearings.

15. On September 16, 1957, this Committee rendered a full report to the Executive Council, reviewing fully the evidence which had been presented. The Committee concluded that the BCW was dominated by corruption and corrupt influences. On October 15, 1957, the Executive Council adopted the Report, affirming the finding that BCW was dominated by corrupt influences, and specifying certain corrective action which would be required of the BCW if it were to avoid expulsion from the AFL-CIO. The action was to be taken by November 15, 1957.

117 16. On November 14, 1957, the BCW Board met. A majority, with plaintiff participating, voted not to comply with the AFL-CIO directives. Accordingly, on November 15, 1957, the BCW was suspended from the AFL-CIO.

17. BCW appealed to the Second Constitutional Convention of the AFL-CIO, which convened at Atlantic City, New Jersey, on December 5, 1957. The AFL-CIO Appeals Committee made a Report to the Convention on December 9, 1957. That report recommended adoption of the findings of the Committee and the Council that the BCW was dominated by corruption, and recommended that the BCW be expelled on or before March 15, 1958.

18. President Cross and others addressed the Convention on behalf of the BCW. The BCW had been represented and had been heard also before the Appeals Committee, the Executive Council and the Ethical Practices Committee.

19. A copy of the official Report of the proceedings of the AFL-CIO Convention for December 9, 1957, is attached to this Affidavit as Exhibit 2 and is incorporated herein as though repeated in full. At the conclusion of that meeting, President Meany of the AFL-CIO announced a meeting with the AFL-CIO Executive Council for the next morning and invited the BCW Executive Board. The Board, however, with plaintiff participating, decided it would not attend and that it would disregard the AFL-CIO.

20. Accordingly, the AFL-CIO expelled the BCW, on December 12, 1957.

21. The basis for this action is set forth in the Report of the Appeals Committee. Exh. 2, pp. 21 et seq. BCW was found to be "dominated or substantially influenced by corrupt influences" and "abuses" (Exh. 2, p. 31), for the following principal reasons.

118 22. First, Cross had had an improper financial relationship with a bakery industry employer, borrowing money from him at favorable terms and not making repayments until his transactions were exposed, and in return personally intervening in a collective bargaining negotiation between the BCW and that employer. Exh. 2, pp. 23-25; see also Exh. 1, e. g. , pp. 2981-3021.

23. Further, Cross and Stuart were found to have accepted a Cadillac automobile, paid for by BCW funds of a Local under trusteeship, through manipulating the records of that Local in an effort to show that the expenditures were for legitimate Union purposes. Exh. 2, pp. 25-26; see also Exh. 1, e. g. , pp. 3021-3, 3149-56. While Cross now apparently admits that these book entries were fictitious and fraudulent, he told the BCW Board at his own "trial" that his Cadillac was a gift; and he personally supported Stuart's defense that the expenses were legitimate.

24. Moreover, BCW funds had been diverted for other improper purposes. A woman friend of Cross had received some \$10,000 from BCW itself, and other sums from a Local under trusteeship, in dealings which were kept private at the time and which Cross admitted keeping secret from the BCW. While he told the BCW Board at his trial that,

when the proof of her receipt of these monies became known to the McClellan Committee and the AFL-CIO, he fabricated a story that she was a "secret organizer" (which is obviously as possible as darkness at noon), a story which is full of obvious inconsistencies and prevarications. See, Exh. 2, pp. 26-27; Exh. 1, e.g., pp. 2913-2980, 2763-2772, 2742-52.

25. In the course of these manipulations, Cross commingled personal funds and BCW funds in a single bank account. In addition there were other accounting irregularities and improprieties in BCW.

119 Stuart, for example, had diverted to a personal account BCW funds which were recorded as organizing expenditures by a BCW Local under trusteeship. Exh. 2, pp. 26-27; Exh. 1, e.g., pp. 2582-2667.

26. Further, BCW had been derelict in its responsibility and duty to take action against obviously corrupt officials, such as Cross and Stuart. Exh. 2, p. 27; Exh. 1, e.g., pp. 2908-9.

27. In refusing to take action against this corruption, and in actually condoning it and protecting the corrupt influences within the BCW, plaintiff, and the others who participated in the various corrupt enterprises summarized above, flagrantly and obviously violated his oath as a member and as an officer of BCW. Plaintiff brazenly and clearly violated his trust and his fiduciary duty as officer, and as the officer having responsibility over the funds, in refusing to do what he certainly had the duty and purportedly had the authority to do -- to expose, to punish and to correct the corrupt influences which dominated BCW. Plaintiff plainly and deliberately violated the BCW Constitution, as well as the most elementary morality and conscience.

28. By this conduct, plaintiff, and the BCW which is the only purported basis of his authority as "trustee" or "Acting Secretary-Treasurer", obviously violated the fundamental terms and conditions of the contract and agreement between the BCW and its Locals and members.

29. The fundamental terms of the agreement of trust, obvious from the nature of the BCW and the terms of its Constitution, were that

all funds would be expended for legitimate union purposes and none of it would be diverted for personal enrichment and corruption.

30. Further, a fundamental condition was that there would be affiliation with the main stream of the American Labor Movement (see point II below), the AFL and thereafter the AFL-CIO; or that affiliation
120 with the parent federation would not be jeopardized or sacrificed because of domination by corrupt influences.

31. Because of these fundamental but unmistakable violations and transgressions by BCW, any obligations which any Local owed BCW, and any rights which BCW might otherwise have had over any Local, terminated. This occurred prior to December 17, 1957, the date of the purported imposition of "trusteeship" on Bakers Union 118.

32. Early in March, 1957, when it became clear that the prevailing attitude of the BCW leadership, including plaintiff, was to condone and facilitate corruption and to punish those who might expose corruption, a Committee to Preserve Integrity Within the Bakery and Confectionery Workers' International Union of America was formed. It consisted originally of four Vice Presidents and Secretary-Treasurer Sims. Its objective, as is evident from its name, was to clean up the BCW from the inside.

33. Any assertion that this Committee was originally formed for the purpose of secession is a deliberate and total lie. See plaintiff's affidavit, par. 12, p. 5. Plaintiff would not be in Court today, nor would he have to confront his own unclean hands, his bitter conscience and a dying BCW, if he had been as dedicated as the members of the Committee to preserving integrity within the BCW, or to fulfilling the purposes and defending the Constitution of the BCW.

34. The Committee to Preserve Integrity within the BCW appealed for assistance in its work to all BCW Locals who were dedicated to an honest and legitimate Union, and to maintaining affiliation with the AFL-CIO. Bakers Union 118 is proud that it was one of the first, and always was one of the strongest, supporters of said Committee, even though that is the very reason in fact for the imposition of this purported

"trusteeship".

121 35. Bakers Union 118, together with other Locals participating in the work of the Committee, repeatedly requested the BCW General Executive Board, of which plaintiff is a member, to rid BCW of corrupt influences and to restore its good name and good standing with the American Labor Movement and the public generally.

36. After the Report of the AFL-CIO Ethical Practices Committee, and the directives of the AFL-CIO Executive Council, Bakers Union 118, together with other like-minded BCW Locals, consistently and repeatedly urged the BCW General Executive Board, of which plaintiff was a member, to comply with the AFL-CIO mandate, and thoroughly to rid the BCW of corrupt influences.

37. Each such request was turned down by the BCW, with plaintiff himself participating in the rejection, and himself persisting in the determination to lend aid and support to the corrupt influences dominating BCW. His bringing this action is part and parcel of his active and self-serving participation in the corruption.

38. With the expulsion of the BCW by the AFL-CIO on December 12, 1957, it was of course necessary and unavoidable to recognize that it was impossible to have an honest and honorable union for employees in this industry, and a union in league with the American labor movement joined together in the AFL-CIO, within the BCW. Accordingly, the AFL-CIO chartered a new International Union, the ABC, on December 12, 1957.

39. As soon thereafter as was practicable, Bakers Union 118 gave notice to its membership as set forth in the following paragraphs, that a meeting would be held which would consider disaffiliation from BCW and affiliation with ABC.

40. The following notice was sent to each member of the Local by postal card:

122 BAKERS LOCAL UNION NO. 118
NOTICE OF SPECIAL MEETING

Dear Members:

December 18, 1957

A special Meeting is called for Saturday, December 21, 1957, at 1 P.M., at the Milk Drivers Building, 401 Third St., N.W., in the basement. It is urgent and necessary that all members attend this meeting.

Fraternally yours,

CHARLES B. McCLOSKEY,
Business Agent, 118.

41. In addition, the following telegram was sent to each employer (23 telegrams) for posting in the shops:

CONFIRMATION COPY OF 23 TELEGRAMS

FD RB 103 PD 1 EXTRA

DEC 19 1110A

DONT PHONE

THE FOLLOWING TO BE POSTED ON BULLETIN BOARD-

ATTENTION ALL MEMBERS OF LOCAL UNION 118 AT A SPECIAL MEETING OF THE LOCAL TO BE HELD AT 401 THIRD STREET NORTHWEST AT ONE OCLOCK ON SATURDAY 21ST DAY OF DECEMBER 1957 THE MATTERS OF THE EXPULSION OF THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA BY THE AFL-CIO AND DISAFFILIATION OF THIS LOCAL FROM THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA AND ITS AFFILIATION WITH AMERICAN BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION AFL-CIO WILL BE DISCUSSED AND ACTED UPON EVERY MEMBER IS URGED TO ATTEND THIS IMPORTANT MEETING

CHARLES M MILLER PRESIDENT BAKERS LOCAL
UNION 118

MAIL TO
635 F ST NW

BOOK 23

- 123 42. The meeting, which was held on December 21, 1957, was attended by approximately 700 out of 1100 members, an exceptionally large turnout. A stenographic transcript of the meeting is attached hereto as Exhibit 3 and is incorporated herein as though repeated in full. It was a democratically conducted meeting and the membership was fully aware of the crucial issues involved and discussed them fully.

43. At this meeting, the following motion of disaffiliation with BCW and affiliation with ABC was duly made, seconded and passed unanimously:

WHEREAS, a fundamental condition of the basic compact and relationship between the Bakery and Confectionery Workers International Union of America, and its individual members and subordinate bodies was and is that the financial resources of said Union constitute a trust to be used solely for the legitimate and honorable trade union purposes; and

WHEREAS the said Union, in flagrant breach of its fiduciary obligation as a trustee, has permitted the unlawful diversion of such funds for the personal use and pleasure of its President and others; and

WHEREAS, a basic understanding and contract between the Bakery and Confectionery Workers International Union of America and its individual members and subordinate bodies was and is that affiliation with the AFL-CIO and with the AFL prior to the merger would not be jeopardized or surrendered by unethical or corrupt conduct; and

WHEREAS, the said Union, in violation of the fundamental understanding and agreement with its membership and its subordinate bodies has, been expelled by the AFL-CIO as dominated by corrupt influences; and

WHEREAS, the membership of this Local Union duly authorized delegates to participate in a meeting called by the Committee to preserve integrity in the Bakery and Confectionery Workers International Union in Atlantic City, New Jersey, on December 6-10, 1957, which meeting enthusiastically and unanimously supported said committee in adhering to the fundamental commitments to maintain a trade union organization for Bakery and Confectionery Workers free from any taint of corruption, and in honorable affiliation with the AFL-CIO and;

WHEREAS, the AFL-CIO on December 12, 1957 did charter the American Bakery and Confectionery Workers International Union;
 124 NOW, THEREFORE, be it resolved:

1. That Local 118 hereby affirms and declares that the Bakery and Confectionery Workers International Union of America has violated the fundamental and basic terms and conditions of its relationship, understanding, compact and contract with its members and locals and has by its own actions destroyed the bonds of affiliation between itself and this local, and that Local 118 hereby disaffiliates from the Bakery and Confectionery Workers International Union of America; and
2. That all property of Local 118 of any nature whatsoever shall follow the decision of the majority; and
3. That the Local officer take all steps necessary to protect the property and assets of the Local; and
4. That all Local offices shall continue in their present status; and
5. That Local 118, hereby affiliates with the American Bakery and Confectionery Workers International Union, AFL-CIO, and directs its President forthwith to apply to said Union for a Local Union charter, and to take all steps necessary to consummate and to effectuate affiliation with the American Bakery and Confectionery Workers International Union, AFL-CIO.

44. The unanimity (Exh. 3, p. 40) deserves underscoring because of the bold allegation in the complaint, that there were seven members who desire the continuation of the BCW Charter. There is absolutely no support for any such allegation.

45. Because of the nature of my duties, I cannot imagine that there is any person in the world who knows the membership of Bakers Union 118 as well as I do. I believe that there is not one member who desired to retain a charter with BCW. I know of a certainty that there was not one such vote at the meeting, and that not one such sentiment has been expressed to me, before, during or after that meeting.

46. After all, the issue is not that complicated or controversial. It is honesty or dishonesty, a clean union or a corrupt union. In this case, the choice is actually as simple as that, particularly after the public hearings and the well-supported, and unanswered and unanswerable, findings and decision of the AFL-CIO.

125 47. Plaintiff and BCW have no rights over Bakers Union 118 because of their violations of the contract between BCW and its members and Locals, and of the BCW Constitution. These violations have consisted of the gross corruption and brazen breach of fiduciary duty, discussed in I above, which is applicable to all Locals, including 118. In addition, Plaintiff and BCW have violated the spirit and the letter of the basic contract and Constitution between BCW and 118 specifically. The violations affecting 118 particularly are those involving: (A) the terms and consideration under which Bakers Union 118, which is older than BCW, consented to be affiliated with BCW; (B) the lack of support or assistance in fact from BCW, as opposed to the promise of the BCW; and (C) violations of the BCW Constitution in establishing the "trusteeship" over 118 which is before the Court.

48. A. Bakers Union 118 is one of the oldest trade unions in Washington, D.C., having been formed in 1882. It was only some years later, in 1886, that the BCW was formed. In fact, Bakers Union 118 was one of the independent local unions that assisted BCW and became affiliated with it in the year of its formation.

49. It is not Bakers Union 118 which owes its existence to the BCW, contrary to the allegations of the complaint. Rather, it is the BCW that owed its existence to the separate and independent local unions, like 118, which voluntarily elected to band together for common objectives. Bakers Union 118 was an autonomous labor organization before the BCW and it never surrendered the full measure of its autonomy; it only suspended the exercise of its autonomy to the extent necessary to accomplish the very clearly understood common objective.

50. That objective was to build an organization for all of American labor. BCW gave every promise of being associated with such a

126 movement, and very early, on February 23, 1887, became affiliated with the AFL.

51. The Court will note, from Exhibit "A" to the Complaint, the BCW Constitution, that the BCW, even in the Constitution adopted in 1956, in the Cross administration, was proud to put on the very first page, "Affiliated with the A. F. of L. since February 23, 1887. Affiliated with the AFL-CIO since December 5, 1955." The BCW Constitution expressly provides for representation at AFL-CIO Conventions (Complaint, Exh. "A", Art. IX, p. 21); and I know there have been similar provisions in prior BCW Constitutions.

52. This association with the AFL and later with the AFL-CIO has always been and continues to be of paramount importance to the Local.

53. Article I, Section 1, page 3 of the Bylaws of Local 118, effective when it was affiliated with BCW, sets out the requirement that the Local maintain affiliation with the American Federation of Labor, through the Central Labor Union of the District of Columbia. The Local has long maintained affiliation with the Central Labor Union.

54. The door to our office carries the following statement: "Bakers Union Local 118, AFL-CIO." Our stationery carries the statement: "Affiliated with the American Federation of Labor."

55. I have served as Vice President of the District of Columbia Central Labor Union for eighteen years; and several officers of the Bakers Union 118 are on a number of its committees. The expulsion of the BCW from the AFL-CIO would make us ineligible thus to participate in the work of the legitimate American labor movement. This is the exact opposite of the objective which was the prime consideration for the original affiliation of Bakers Union 118 with the BCW.

127 56. Over the years Bakers Union 118 has derived aid and comfort from its association with the AFL and later with the AFL-CIO.

57. Despite plaintiff's assertions to the contrary, we have never received similar aid and support from BCW. The BCW Constitution speaks of strike benefits, and the entire point of an International is to render assistance to the locals and to the membership.

58. This was not true, however of the BCW. Its President Cross was not interested in helping any Local which might oppose his or other corrupt influences. This was demonstrated during our last negotiations when Cross deliberately weakened our bargaining strength by arbitrarily and capriciously withholding strike permission from the Local. Such permission would have been automatically granted to any Local participating in the Cross pattern of corruption; and such permission was required by fair dealing and by the BCW Constitution.

59. In October, 1957, the negotiations between Bakers Union 118 and the baking industry management with which we bargain had reached a stalemate. The employers flatly refused to agree to any improvements whatsoever in the existing agreement. When it became obvious at last that they would not be moved from this position unless we were prepared to take strike action, a strike vote was taken by secret ballot of the members involved. The result was 784 votes to strike, 9 against, and 3 blanks.

60. In accordance with the International Constitution, I wrote to Cross on October 14, 1957, asking for strike permission, enclosing copies of our Sixty Day Notices, our Thirty Day Notices, the number of
128 bakeries involved and the number of members employed therein, our proposed contract demands to the employers and the results of the strike vote. Under the BCW Constitution and regular procedure, I should have very promptly received permission.

61. Instead, on October 18, 1957, we received the following telegram from Cross: "Strike permission request sent to the General Executive Board whose action must be awaited. Avoid unauthorized cessation of work. Signed: James G. Cross." So far as I know there was no precedent for such a wire. Certainly there was no justification for it.

62. As every trade unionist knows, when a strike situation is pending, time is a vital factor. Every day that passed without the receipt of authorization to strike weakened our bargaining position and reinforced the stubbornness of the employers. In the continuing absence of authorization, or any other form of aid or support, the International

President and his rubber-stamp majority on the Executive Board, including the plaintiff, acted as a blockade between our members and a favorable contract settlement.

63. On October 29, 1957, having received no further word on our strike permission, I called the International Office in an effort to get through to Cross. I was told he was not in and no one knew when he would be in. When I was finally put through to his secretary and told her of the urgency of our situation, she inquired as to the number of people and the number of bakeries involved - information that Cross had had in his hands, along with the other material that accompanied our strike permission request, for two weeks.

64. Cross, of course, knew where Bakers Union 118 stood on the question of corruption - that its officers and members would never go along with his efforts to defy the ethical principles of the trade union movement and to sacrifice the integrity of our great International to his
129 own personal selfish interests. His intentions were obvious - to provoke, by withholding of strike permission, an unauthorized strike, which he would then seize as a pretext for taking over the Local and placing it under his trusteeship. His scheme did not work, but only because the Local refused to walk into the trap by violating the Constitution.

65. In spite of the BCW and Cross, we finally proceeded in obtaining a favorable agreement. Much of the credit for this belonged to the very valuable help that was given to us voluntarily by Vice President John DeConcini, who came into the negotiations on his own, and to the efforts of the Federal Mediation Service. DeConcini is one of the original members of the Integrity Committee referred to above.

66. The BCW and Cross obviously gave us no assistance whatever - and in fact tried to hurt us and did hurt us - in these negotiations which are at the heart of the purpose and work of Bakers Union 118.

67. When, following the settlement, I charged President James G. Cross with the deliberate betrayal of Local 118, he stated to the press that we "could have struck" without permission. In other words, he sought to deny his own responsibility in the case by arguing that we

should have disobeyed the explicit instructions contained in his telegram of October 18, and that we should have violated the clear language of the BCW Constitution!

68. BCW and plaintiff have no rights or interests whatever in any collective bargaining contract of Bakers Union 118. The only union party to the contract referred to is Bakers Union, Local 118. There is no mention of BCW.

69. C. The violation of the BCW Constitution in the establishment of the purported "trusteeship" over Bakers Union 118 is plain upon the face of plaintiff's papers. The BCW Constitution requires that "...

130 immediately upon the appointment of a special trustee the International President shall notify the officers of the affiliate involved... that a hearing shall be held...X" Complaint, Exh. "A", Art. XX, Sec. 4 (b), p. 48 (emphasis added). In this case the notification was not immediate and it was not by the International President.

70. Plaintiff's own affidavit admits that it was not until three days after the purported imposition of the trusteeship that notification of a hearing was sent. Also, it is admitted that the plaintiff himself, and not BCW President Cross, sent the notification telegram. Affidavit of Peter H. Olsen, attached to plaintiff's motions for injunction, par. 21, p. 8.

71. Furthermore, this same provision of the BCW Constitution requires that the BCW General Executive Board reconsider the case after the "hearing" and decide whether the trusteeship should be continued. There is no allegation anywhere in the papers that this was done. Plaintiff could have waited for this necessary BCW Board action, since he did not file his Complaint and attempt to rush through an injunction ex parte until January 4, 1958, but there is no allegation that the BCW Board took any action whatever after the hearing scheduled for January 3, 1958.

72. There are no exceptions in the BCW Constitution for Locals who are opposed to corrupt officers and have demonstrated their determination to have a clean union, free from corruption, and remaining affiliated with the AFL-CIO. The requirements specified above are

absolute. They must be complied with, each and every one, regardless of what the Local involved does. Otherwise there cannot be any valid trusteeship under the BCW Constitution. Since these requirements were not followed with respect to Bakers Union 118, there is no valid trusteeship over us, even under the BCW Constitution which is alleged to support the plaintiff.

131 73. Bakers Union 118 did not attend the purported hearing on the "trusteeship". There was no Local 118, BCW, at the time for which the hearing was scheduled, January 3, 1958.

74. Bakers Union 118 did inform the BCW of its position, by the following letter, which was responsive to the plaintiff's telegram of December 20.

December 31, 1957

Mr. James G. Cross
Bakery and Confectionery Workers'
International Union of America
1145 19th Street, N. W.
Washington, D. C.

Dear Sir:

We are in receipt of your purported notice of hearing for January 3, 1958, which is merely another step in your predetermined, unlawful attempt to assume control over this Local by "trusteeship".

There is no authority or basis whatsoever for your attempt at imposing a "trusteeship" over this Local. As you well know, your own conduct has terminated and vitiated whatever basis or authority might have existed previously, for it has flagrantly and deliberately violated the fundamental terms and conditions of the relationship and compact between the Bakery and Confectionery Workers' International Union of America and its members and Locals.

These absolutely required that the funds of the International be a Trust and be expended solely for legitimate and honorable trade union objectives. They required absolutely also that affiliation with the AFL-CIO not be jeopardized and certainly not lost because of corruption. Your own corruption and brazen indifference to integrity and to affiliation have caused the expulsion of the Union from the AFL-CIO and the

chartering by the AFL-CIO of the American Bakery and Confectionery Workers' International Union, with which this Local has given public notice of its affiliation.

Accordingly, we do not intend to appear or to take any heed of your notices which are so clearly devoid of any basis or authority.

Very truly yours

Bakers Local Union No. 118

By /s/ Charles K. Miller

President

132 In addition to the fatally defective manner in which the trusteeship was imposed, I would like at this point to repeat that there are not seven members who desired to retain the BCW charter, so that there is no one for whom plaintiff can be trustee.

Furthermore, because of the evident corruption of BCW and its determined repeated refusals to clean up and abide by the AFL-CIO directives that it clean up, Bakers Union 118 have not submitted per capita dues payments to the BCW for over two consecutive months. Accordingly, under the BCW Constitution there could not possibly have been any members of Bakers Union 118 in good standing with BCW.

133 III.

75. On December 31, 1957, I gave notice of our changed affiliation to each of the employers with whom we deal, by sending to each the following letter:

On December 12, 1957, the AFL-CIO at its Convention in Atlantic City, New Jersey, expelled and disaffiliated the Bakery and Confectionery Workers' International Union of America. The Convention thereupon issued a charter of affiliation to the American Bakery and Confectionery Workers' International Union AFL-CIO.

On December 21, 1957, the members of Local No. 118 voted un-animously to affiliate with the American Bakery and Confectionery Workers' International Union, AFL-CIO. As you know, your collective bargaining contract is with this Union, Local No. 118, which is the duly designated representative of a majority of your employees. We shall, of course, continue to recognize the contract between your Company

and this Local, and we know that you will do likewise. Any other action would be in plain derogation of the contract. Of course, the checkoff continues to the Local. Make checks payable to Bakers Local Union 118, AFL-CIO.

We count on your continuing cooperation, and shall be pleased to meet and discuss with you any matters growing out of these recent events.

This letter was sent to each of the following employers (addresses in Washington, D.C., unless otherwise noted):

Briggs Ice Cream 3621-Benning Rd.	Regal 5025-Minn. Ave. Kenelworth, Maryland
Breyers 1830-Bladensburg Rd., N. E.	Southern Dairies Inc. 60-M-St., N. W.
Fussell Young 600 Calvert St. Alex., Virginia	Colonial Ice Cream S. Capitol & E., St., S. E.
Carrys Ice Cream 1337 D St., S. E.	Mrs. Smiths Colonial Pie 8130-Georgia Ave., N. W.
The Olympia Bakery 58 E Street, S. W.	Posins Bakery 1500 University Blvd Hyattsville, Maryland
Heidi Bakery 930 King Street Silver Spring, Maryland	Schneider Baking Company 413 Eye Street, N. W.
Fairfax Baking Company Division of Safeway Stores, Inc. 1845 4th St., N. E.	Ottenbergs Bakery 1241 Morse St., N. E.
Safeway Stores, Inc. 1845 4th St., N. E.	Safeway Stores, Inc. 740 15th St., N. W.
134 General Baking Company 2146 Georgia Avenue, N. W.	County Fair Baking Co. 641 S Street, N. W.
Crusty Pie Company 30 O St., N. W.	Wonder Bakery 2301 Georgia Avenue, N. W.

76. The newspapers in Washington, D.C., reported the fact that Bakers Union 118 had disaffiliated. The Washington Post and Times-Herald went beyond reporting the event in its news columns, and wrote an editorial commending Bakers Union 118 on its action. A copy of that editorial is attached hereto as Exhibit 4 and is incorporated herein as

though repeated in full.

77. Further, each of the various events which I have referred to in I above was reported fully in the press in Washington, D.C., and, so far as I know, nation-wide. Certainly it became a matter of widespread public knowledge that the BCW had been expelled from the AFL-CIO as corrupt, and that ABC had been chartered by AFL-CIO as a new International for bakery and confectionery workers who desired to remain in the American labor movement and to be members of an honorable and legitimate labor organization.

78. There is not the slightest basis in fact for any allegation that there has been any confusion in anyone's mind (except perhaps for the question why we did not take this action sooner), because of the disaffiliation of Local 118 from the BCW and its affiliation with ABC. Specifically, I know of no fact, incident, complaint or any basis whatever for the allegation which is paragraphs 25 and 28 of the Complaint.

/s/ Charles B. McClosky

[JURAT, dated January 21, 1958.]

134-B-1

EXCERPTS FROM EXHIBIT 2 TO
AFFIDAVIT OF CHARLES B. McCLOSKEY:

SECOND CONSTITUTIONAL CONVENTION OF
THE AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS

1957

PROCEEDINGS

Atlantic City, New Jersey, December 9, 1957

* * * * *

134-B-3

REPORT OF THE APPEALS COMMITTEE
Second Convention of The American Federation of Labor and
Congress of Industrial Organizations

In Re: Appeal of the Bakery and Confectionery Workers' International
Union of America

BASIS OF THE APPEAL

Pursuant to Article VIII, Section 7 of the AFL-CIO Constitution the Bakery and Confectionery Workers' International Union of America, under date of November 24, 1957, notified the Secretary-Treasurer of the AFL-CIO of its request to present its position to the AFL-CIO Convention. This request was treated by the AFL-CIO as an appeal by the Bakery Workers Union from the actions taken by the Executive Council on September 25 and October 25, 1957, with respect to the Bakery Workers' Union. Pursuant to Article IV, Sections 9 and 10 of the AFL-CIO Constitution, this appeal was referred to the Appeals Committee of the Convention appointed by President George Meany.

Upon due notice to the Bakery Workers' Union, the Committee held hearings on December 4 and 8, 1957. At these hearings there were submitted to the Committee, on behalf of the Executive Council of the AFL-CIO the resolution adopted by the Executive Council, the reports of the Ethical Practices Committee to the Council, the transcripts of the hearings before the Ethical Practices Committee and the exhibits thereto. The representatives of the Bakery Workers' Union were given a full opportunity to and did present materials and arguments which they thought appropriate in support of the Union's appeal.

This report is submitted by the Appeals Committee to the Convention of the AFL-CIO on the basis of all of the materials presented to it and the arguments made before it.

The Issues

The issues presented to the Appeals Committee can only properly be understood in the light of the provisions of the AFL-CIO Constitution, the resolutions adopted at the founding Convention of the AFL-CIO, the findings of the Ethical Practices Committee, the findings and directives of the Executive Council and the actions of the Bakery Workers' Union with respect to them.

1. The AFL-CIO Constitution

The Constitution which the AFL-CIO adopted with the unanimous concurrence of each affiliated union provided that one of the basic objects

and principles of the Federation should be

"to protect the labor movement from any and all corrupt influences and from the undermining efforts of communist agencies and all others who are opposed to the basic principles of our democracy and free and democratic trade unionism."

The Executive Council was given power to conduct an investigation either directly or through an appropriate Committee into any situation in which there is reason to believe that any affiliate is "dominated, controlled or substantially influenced in the conduct of its affairs by any corrupt influence . . ." The Council was further given the authority 134-B-4 "to make recommendations or give directions to the affiliate involved" and "upon a two-thirds vote, to suspend any affiliate found guilty of a violation of this section."

The AFL-CIO Constitution preserved the principle of national and international trade union autonomy but, by its provisions with respect to corruption and Communism, it made it clear that no union, large or small, which was corruptly dominated or influenced had a right to remain in affiliation with the AFL-CIO.

The founding Convention of the AFL-CIO implemented these constitutional provisions by adopting, by unanimous vote, a resolution which called upon "all its affiliated national and international unions to take whatever steps are necessary within their own organizations to effect the policies and ethical standards set forth in the Constitution of the AFL-CIO."

The Appeals Committee has considered the appeal of the Bakery Workers' Union with the clear understanding and conviction that these constitutional provisions and resolutions, which were concurred in by the Bakery Workers' Union as well as by every other union which participated in the formation of the AFL-CIO, are necessarily binding upon the Executive Council, upon this Committee and upon the Bakery Workers' Union.

2. The Proceedings Before the Ethical Practices Committee

The proceedings which led to the order of the Executive Council which is being appealed to the Convention arose as a result of an investigation begun at a preliminary hearing on March 15, 1957 when President George Meany requested the Ethical Practices Committee, which had been appointed pursuant to the Constitution, to conduct a formal investigation as to whether the Bakery Workers' Union is "dominated, controlled, or substantially influenced in the conduct of its affairs by any corrupt influence." The Committee held hearings May 7, July 31 and August 1, 1957. The Bakery Workers' Union was given or had available copies of all materials considered by the Committee and was given a full opportunity to respond to all of the evidence against it.

On the basis of the hearings and the materials presented to the Ethical Practices Committee, that Committee on September 16, 1957, submitted a report to the Executive Council. The report is contained on pages 107-140 of the Supplemental Report of the AFL-CIO Executive Council on Ethical Practices Cases which has been distributed to the delegates to the AFL-CIO Convention.

3. The Findings of Corrupt Influence

The Ethical Practices Committee concluded that the Bakery and Confectionery Workers' Union does not meet the ethical standards required by the AFL-CIO Constitution because of the following unethical and corrupt practices which the Committee found to be in violation of the rules and procedures of trade union morality embodied in the AFL-CIO Constitution:

- (a) the financial relationship between President Cross and an employer in the bakery industry, Martin Philipsborn;
- 134-B-5 (b) the acceptance by President Cross of a Cadillac paid for by a local union under trusteeship and concealed as an organizing expense on the local's books;
- (c) expenditures of union funds for improper purposes, improper procedures with respect to expense accounts, and commingling union funds and personal funds in the same account; and

(d) the Executive Board's summary acquittal of Vice-President Stuart and the Union's failure to proceed against him for misuse of funds of a local union of which he was trustee, in the face of plain documentary proof of such misuse, and to insist, not only upon his resignation as an International officer, but also upon his making full restitution to and his expulsion from the Union.

- (a) Improper Financial Relationship Between President Cross and Martin Philipsborn, a Bakery Industry Employer - Conflict of Interest.

* * * * *

134-B-6 Before the Appeals Committee, President Cross contended that the Ethical Practices Committee had found no more than a "serious error in judgment" with respect to his financial relationships with Mr.

Philipsborn. However, this is not a complete or accurate statement of the findings of the Ethical Practices Committee. It is true that the Committee at one point referred to it as a serious error in judgment, but its primary finding on this point, reiterated throughout its report, was that the financial relationship between Philipsborn and Cross was one of the number of "unethical practices" engaged in by President Cross "in violation of the AFL-CIO Constitution" and "was plainly contrary to the basic ethical principles of the trade union movement."

Your Appeals Committee concurs in the findings of the Ethical Practices Committee. We hold that President Cross violated time-honored rules of the labor movement and was guilty of unethical practices when he obtained substantial loans with favored terms and interest rates from a top official of a company which has a collective bargaining

134-B-7 relationship with the Bakery Workers' Union. President Cross thereby placed himself in a compromising position which inhibited his freedom in carrying out his trust of representing the needs and interests of the Union's members at this company. These actions of President Cross clearly constituted unethical practices.

- (b) President Cross' Improper Acceptance of Cadillac from a Local Union Under Trusteeship and its Concealment on Local's Books As An Organizing Expense.

Another example of unethical and corrupt practices by President Cross was his acceptance of a Cadillac car paid for by Chicago Local No. 100 and concealed on the Local's books as an organizing expense, at a time when Local 100 was under trusteeship. President Cross had appointed Vice President Stuart as trustee to administer the affairs of this local on behalf of the International Union.

* * * * *

Your Appeals Committee deplores the diversion of union funds for private purposes, and the resort to false entries in the books of a local under trusteeship, in order to cover up the purchase of Cadillac cars for the International President and the International Vice President appointed as trustee by the President. This is a gross violation of all precepts of decency and trade union ethics and a corrupt practice.

* * * * *

134-B-8

- (c) Diversion of Union Funds for Improper Purposes, Improper Accounting Procedures on Expenses, Commingling of Union and Personal Funds.

The Ethical Practices Committee also found as corrupt and unethical practices diversion of union funds for improper purposes, grossly extravagant expenses, improper procedures with respect to expense accounts, and commingling of union funds and personal funds in the same account.

The record before the Ethical Practices Committee showed that President Cross had authorized payments of \$10,000 of union funds to a disreputable person with a criminal record. The Ethical Practices Committee rejected Cross' contention that this woman was a "special organizer" and labeled it as diversion of union funds, improper and unjustified. The Ethical Practices Committee found that while \$2,500 had been repaid by President Cross, the balance remained unpaid.

The Appeals Committee concurs that these payments constituted a flagrant corrupt practice on the part of President Cross.

* * * * *

134-B-9 In addition, the Ethical Practices Committee found other evidence of improper records and accounting by locals, including locals under trusteeship, which prevented determinations as to whether expenditures for many items were for union purposes or for the personal benefit or use of International or local officers.

Your Appeals Committee finds that President Cross diverted union funds for improper purposes, made extravagant expenditures of union funds, and improperly commingled his personal funds with union funds set aside in a special account. These are serious corrupt and unethical practices in violation of trade union morality. We further find as unethical practices the improper accounting procedures relative to expense accounts, and the inadequate supervision over the financial affairs of Local unions.

We reiterate the Ethical Practices Committee's injunction that it is the duty of union officers to prevent expenditures of union funds which are not for legitimate union purposes, to curb extravagant expenditures, and to establish sound accounting procedures.

(d) Exoneration of and Failure to Proceed Against Former Vice President Stuart.

The Ethical Practices Committee also found as an unethical practice the manner in which the Bakery Workers' Union dealt with former Vice President Stuart. At first, the Union's General Executive Board summarily acquitted him on internal charges which former Secretary-Treasurer Sims had brought against him and President Cross despite clear documentary proof that Stuart had misused union funds and has given no accounting therefor. While Stuart thereafter resigned his office, the Union nevertheless failed to institute proceedings to oust him from membership and to seek restitution of funds and other things of value, improperly obtained by Stuart.

The Appeals Committee agrees with the finding of the Ethical Practices Committee that Stuart's resignation was insufficient to exculpate the Union's leadership from responsibility for Stuart's defalcations and that the Union was derelict in not proceeding against Stuart.

134-B-10 6. Suspension of Bakery Workers' Union

On November 15, 1957, the Bakery Workers' Union was notified that President Meany had determined that the November 14, 1957 statement and resolution of the General Executive Board of the Bakery Workers' Union did not meet the conditions set forth in the Executive Council directive of October 25, 1957. They were further informed that President Meany had declared that "due to the failure of the Bakery and Confectionery Workers' International Union of America to comply with the Executive Council directive of October 25, 1957, it now stands suspended from the AFL-CIO."

* * * * *

134-B-11 Findings of the Appeals Committee

On the basis of our specific findings of corrupt and unethical practices under section 3 above, the Appeals Committee concurs with the findings of the Executive Council on September 25, 1957, that the Bakery Workers Union "is dominated, controlled or substantially influenced in the conduct of its affairs by corrupt influences in violation of the Constitution of the AFL-CIO."

We find that the failure of the Bakery Workers' Union to bar President Cross from running for office at the forthcoming special convention in the face of the plain evidence of his being guilty of corrupt and unethical practices, constitutes a failure to comply with the Executive Council's directives to root out corrupt influences from the union.

The Appeals Committee also finds that the Executive Council's October 25, 1957 directive that Secretary-Treasurer Sims be reinstated to restore the status quo pending a new election of officers, was justified and necessary to safeguard the integrity of the entire proceeding by preventing retribution against those who have brought to light the evidence of corrupt influences within the Union. The failure of the Bakery Workers' Union to reinstate Sims constitutes an additional violation of the Executive Council's directives.

Your Appeals Committee further finds that the Executive Council's October 25, 1957 directive requiring new elections at a special convention

of all international officers, including the vice-presidents, was amply justified because of the responsibility of all the international officers for permitting many of the unethical practices found above, to go uncorrected.

In addition, your Appeals Committee finds that while the Bakery Workers Union has taken certain measures to correct the corrupt and unethical practices found above, the Union's failure to comply with certain of the Executive Council's directives shows that corrupt influences have not been entirely eliminated from the Bakery Workers' Union.

* * * * *

134-B-12 (4) That the Bakery and Confectionery Workers International Union is expelled from the AFL-CIO. * * * * *

* * * * *

134-B-13 I don't like it, but it is all right with me. I still say the Bakers Union is a good, clean, honest organization and whatever is wrong in it we can correct and we will correct it.

So please don't do anything that will cause such dissention in our movement that we can't correct it.

Thank you.

PRESIDENT MEANY: The Chair recognizes Chairman Rose of the Committee on Appeals.

COMMITTEE CHAIRMAN ROSE: * * * *

In the course of the conversation he made the same appeal to me which he made to you, that he thought he was entitled to another chance in the labor movement. Here he denied his guilt. In a private conference with me he did not deny his guilt, but he felt he was entitled to another chance.

* * * * *

134-B-14 Let me tell you that I am ready to admit that in Mr. James Cross we have a very persuasive and a very appealing speaker. He knows what appeals to the labor mind. But Mr. James Cross is a dual personality. There are two James Crosses, one that was and one that is. The first one knows how to appeal but the second James Cross did not speak today. The second James Cross is in the racket of unethical behavior, of

extravagance, of conflict of interests, of corrupt influence, and I may say of terrorism within the organization itself. It is this James Cross that we are speaking about in our report today. It is this James Cross who is today a liability to his membership and to the entire labor movement. It is this James Cross who in the eyes of the public, in the eyes of public opinion, stands as a symbol of selfishness, of corruption and of betrayal of labor trust.

* * * * *

Every single member who joins an International Union takes on a responsibility to his International Union, and every single International
134-B-15 Union that belongs to the entire labor movement must have a responsibility to the entire labor movement. Those six letters AFL and CIO, are the flag of the labor movement and anybody who has that flag has within his hands the power to do it honor or to besmirch it, to do it good or to do it evil, to bring it credit or to bring it discredit.

* * * * *

I say that the anti-labor legislators and other enemies of organized labor would like to hang racketeering on our neck and the neck of the entire labor movement. And I say that by action of our Convention Friday --
134-B-16 and I hope today -- we will repudiate all the enemies of organized labor that are trying to discredit the entire labor movement.

One thing that emerges from all this discussion we have had until now and might have during this coming week, and that is that we are today re-examining our movement in its full depth, and what some people don't understand is that the labor movement cannot live by bread alone. The labor movement must have ideals of high moral conduct, a sense of responsibility to their own membership and to the entire public, because the labor movement was built by ideals. Those men and women who built the labor movement, those who have martyred themselves in order to build the labor movement, they didn't do it just to keep a number of people, such as James Cross, in comfort. The labor movement was created for the purpose of creating a new life, a higher standard of living and dignity and respect for the American worker.

* * * * *

134-B-17

ROLL CALL
ON RECOMMENDATION OF APPEALS COMMITTEE
(EXPULSION OF BAKERY AND CONFECTIONERY
WORKERS OF AMERICA)

* * * * *

134-B-18 PRESIDENT MEANY: That completes the roll call. The final count of this vote is 11, 003, 835 yes; 1, 608, 695 votes no. Not voting, 114, 244. I declare the recommendation of the Appeals Committee the action of this Convention by more than a two-thirds vote.

148 [Filed January 24, 1958]

ANSWER OF
ORIENTAL BUILDING ASSOCIATION TO PLAINTIFF'S
BILL OF COMPLAINT, MOTIONS FOR TEMPORARY
RESTRAIN-ORDER AND PRELIMINARY INJUNCTION

The Oriental Building Association, one of the defendants herein, having been personally served on January 7, 1958, with the Summons and Complaint herein, Motions for Temporary Restraining Order and Preliminary Injunction, and affidavits and exhibits, etc., in support thereof, and having received by mail on January 8th, 1958, a service copy from counsel for the plaintiff of the Order of this Court herein dated January 7, 1958, for answer respectfully represents:

1. Prior to service upon it of the Complaint and other papers, and the Order of the Court referred to above, and prior to receipt on December 20th, 1957, of plaintiff's telegram referred to in said Complaint and affidavit, it had a Savings Account in the name of Bakers Local Union 118, with a balance therein on December 18, 1957, of sixty
149 five hundred and sixty four dollars and eighty four cents, (\$6, 564. 84). On December 18th, 1957, in the regular course of business and strictly in accordance with the requirements and provisions for the withdrawal of funds from said savings account this defendant issued its check in the sum of Sixty five hundred and sixty four dollars and eighty four cents (\$6, 564. 84), payable to the order of "Bakers Local Union 118, Adolf Hellwig, Financial Secretary-Treasurer, Chas. B. McClosky, Recording

Secretary", which said check closed said savings account. That this defendant has not now nor ever has had since December 18th, 1957, any other savings account or other assets belonging to said Bakers Local Union 118.

2. That this defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegation contained in said Bill of Complaint, Motions, Affidavits, Exhibits, etc.

3. This defendant has no interest in the controversy between the parties to this action and no claims to assert herein.

Wherefore, this defendant, Oriental Building Association, respectfully requests this Honorable Court to enter herein an order denying as to it the motions herein for temporary restraining order, and preliminary injunction, and further to dismiss the plaintiffs complaint as to it, with an award of reasonable costs by it incurred.

ORIENTAL BUILDING ASSOCIATION

By: /s/ John G. Kolb
(Treasurer)

250 /s/ Chapin B. Bauman

Attorney for Oriental Building
Association, 600 "F" Street, N. W.
Washington 4, D. C.

155 [Filed January 25, 1958]

**ANSWER AND REPLY OF DEFENDANT, THE
CITY BANK OF WASHINGTON, TO COMPLAINT
AND MOTION FOR PRELIMINARY INJUNCTION**

The defendant, The City Bank of Washington, for answer to Complaint, and reply to Motion for Preliminary Injunction, filed herein states as follows:

1. That on or about December 20, 1957, the date telegram of notification referred to in paragraph 20 of Complaint was received, and also at the present time, Bakers Local Union #118 had a checking account with a balance of \$1,525.59, located at the Main Branch.

2. That, on or about, December 26, 1957, an account in the following name was opened at said branch: American Bakery & Confectionery Workers' International Union, A. F. of L. -C. I. O., Bakers Local Union #118.

3. That Title 26, Section 203 of the District of Columbia Code (1951 Ed.) provides as follows:

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"Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company."

4. That this defendant is without information or belief concerning the remaining allegations of the said Complaint, and Motion, and can, therefore, neither admit nor deny same.

KELLY AND NICOLAIDES

By: /s/ Richard H. Nicolaides
Attorneys for Defendant, The
City Bank of Washington,
900 Investment Building
Washington 5, D. C.

158 [Filed January 27, 1958]

ANSWER
FIRST DEFENSE

1. The complaint fails to state a claim against defendant, The Prudential Building Association, upon which relief can be granted.

SECOND DEFENSE

2. Defendant, The Prudential Building Association, alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, and states that it is without interest in the controversy herein and has no claims to assert herein.

3. As to paragraph 7, defendant, The Prudential Building Association, admits that it is a banking corporation, but denies each and every other allegation contained in said paragraph 7.

4. As to paragraph 20 of said complaint, defendant, The Prudential Building Association, admits that it received a telegram dated on or about December 20, 1957, purporting to be from plaintiff Peter H. Olson and states that in response to said alleged notice defendant, The Prudential Building Association, notified plaintiff that an account in the name of "Bakery and Confectionery Union & Industry National Welfare Fund" had been closed on January 2, 1957, but denies each and every other allegation contained in said paragraph.

WHEREFORE, defendant, The Prudential Building Association, demands that the complaint herein against it be dismissed.

DUCKETT, GILL & OREM

BY: /s/ Cary M. Euwer
800 Tower Building
Washington 5, D. C.

[Certificate of Service]

195 [Filed February 10, 1958]

SUPPLEMENTAL AFFIDAVIT OF PLAINTIFF

PETER H. OLSON, being duly sworn, deposes and says:

1. I am the plaintiff in the above captioned case; I am an International Vice President and the Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America; and I have been a member of the General Executive Board of said International Union since 1948.

2. With reference to the special session of the General Executive Board of said International Union held March 8, 1957, at the Sheraton-Park Hotel, Washington, D. C., at which I was present, the General Executive Board decided by unanimous vote at that session to suspend Curtis R. Sims as International Secretary-Treasurer and to designate me to fill the vacancy in the office of International Secretary-Treasurer.

3. On November 14, 1957, I was present at a special session of the General Executive Board at the Dupont Plaza Hotel, Washington, D. C.; at said special session the General Executive Board duly adopted a "Statement of Policy and Resolution", a true copy of which is attached hereto, which provided in part as follows:

"The General Executive Board considered that the adoption or rejection of the AFL-CIO Executive Council directives is properly and exclusively the responsibility of a convention composed of delegates elected by the members of the local unions and vested with supreme and ultimate authority as provided by Article III, Section 2, of the International Constitution The General Executive Board agrees to call a special convention of our International Union at the request of the International President, as required by and in accordance with Article V, Section 2(j) of the Constitution. . . ."

196 4. The aforementioned "Statement of Policy and Resolution" also provided as follows:

"The General Executive Board earnestly and respectfully requests the AFL-CIO Executive Council to consider the fore-

going action as total compliance with its directives consistent with the Constitution of the International Union. This action assures the right of the membership democratically to act upon the vital matters concerned at a convention to which delegates have been properly designated and at which they may openly and freely reach decisions in an orderly and proper manner."

5. Files of the International Union show that, pursuant to the aforementioned Board action to comply with the directives of the Executive Council of the AFL-CIO, a news release was issued by the International Union and mailed to all local officers on the same day, November 14, 1957, which read in part as follows:

"The General Executive Board of the Bakery and Confectionery Workers' International Union of America today announced its compliance with the AFL-CIO Executive Council Directive of October 25, 1957."

6. The International Union implemented its decision of November 14, 1957 to hold a special convention by issuing its "Convention Call" on December 17, 1957 to all affiliated local unions, a true copy of the "Convention Call" being attached hereto; said "Convention Call" read in part as follows:

"Pursuant to the Resolution adopted by the General Executive Board in special session on November 14, 1957, upon the request of International President James G. Cross, a special convention of our International Union will be convened in the city of Cincinnati, Ohio, on March 3, 1958. . . .

"The International President and the General Executive Board decided that a special convention should be called to meet the crisis now facing the International Union, as the matters involved are properly and exclusively the responsibility of the Union's sovereign power as provided in Article III, Section 2, of the International Constitution. . . .

"Accordingly, the special convention is empowered to resolve all questions affecting the welfare of the International Union, its constituent local unions, and the membership at large. . . .

"In order to assure the proper accreditation of convention delegates, the International Union has engaged a qualified independent agency, the Honest Ballot Association, to serve with the Credentials Committee in determining all questions concerning the seating of delegates as provided by the International Constitution. This agency shall also assist in the tallying of all convention votes. . . .

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"In order to assure certification of delegates from each local union, all local unions are required to abide by the following procedures:

"1. Delegates shall be elected by secret vote at a membership meeting, except where the local is a factory-shop local under Article XIV, Section 23, of the International Constitution, or where local by-laws expressly provide another manner for selection of delegates . . .

"2. Credentials submitted to International Headquarters shall be accompanied by a certification by the local President and local Secretary as to the method, date, and all pertinent details concerning selection of delegates, including specifying provisions of local by-laws, merger agreements, or other duly authorized rules which are applicable.

"In the event that any delegate is challenged in accordance with Article III, Section 6, of the International Constitution, the local union and its officers shall give full cooperation to the Credentials Committee and the Honest Ballot Association by providing all information requested by the agency and/or the Credentials Committee in order to permit the Committee and

the agency to conduct a full and proper investigation of the basis for the protest."

7. Pursuant to Section 4, Article XX, of the International Constitution, due notice was served on the officers of Local 118, Bakery and Confectionery Workers' International Union of America, that a hearing would be held concerning whether or not the trusteeship established over said Local Union on December 17, 1957, should be continued; said hearing was conducted on January 3, 1958, by International Vice President Lester P. Crawford, acting as Hearing Officer; none of the defendants in this proceeding appeared at said hearing; a certified stenographic transcript of said hearing was taken; and, at said hearing, the affiant, as Special Trustee, recommended continuation of the trusteeship.

8. On January 13, 1958, the General Executive Board unanimously decided, after considering the hearing officer's report and the trustee's recommendation, that trusteeship over Local 118 be continued.

9. Among others, the following members of Local 118, Bakery and Confectionery Workers' International Union of America, have
198 authorized the International Union and counsel retained by it to use their names in proceedings instituted for the protection of their contract rights and benefits and their Local's funds and properties:

Clydie L. Clopton
2806 Channing St., N. E.
Washington, D. C.

Jessie Covington
1534 - 6th St., N. W.
Washington, D. C.

Alexander Davis
1520 Independence Ave., S. E.
Washington, D. C.

James A. Dawson
2610 Randolph Road
Wheaton, Md.

Pete Kladias
325 Farragut St., N. W.
Washington, D. C.

George T. Meleo
54 Crittenden St., S. E.
Washington, D. C.

Joseph Motley
604 - 16th St., N. E.
Washington, D. C.

Vincent M. Russell
800 H Newell Court
Silver Spring, Md.

J. Washington Walker
917 Maryland Ave., N. E.
Washington, D. C.

[JURAT, dated February 10, 1958.]

/s/ Peter H. Olson

STATEMENT OF POLICY AND RESOLUTION OF THE
GENERAL EXECUTIVE BOARD OF THE BAKERY AND
CONFECTIONERY WORKERS INTERNATIONAL UNION
OF AMERICA

The General Executive Board convened in special session on November 14, 1957, to consider the October 25, 1957, Resolution of the AFL-CIO Executive Council. As the condition for avoiding suspension from the AFL-CIO, this International was directed to effect immediate reinstatement of Curtis R. Sims as International Secretary-Treasurer and to call a special convention within 90 days at which all officers must stand for election, except that International President James G. Cross would be barred as a candidate.

The General Executive Board considered that the adoption or rejection of the AFL-CIO Executive Council directives is properly and exclusively the responsibility of a convention composed of delegates elected by the members of the local unions and vested with supreme and ultimate authority as provided by Article III, Section 2, of the International Constitution:

"All the sovereign power, including the legislative, executive, administrative and judicial, of the Bakery and Confectionery Workers' International Union of America shall be vested in its Convention when in session."

The General Executive Board agrees to call a special convention of our International Union at the request of the International President, as required by and in accordance with Article V, Section 2 (j) of the Constitution:

"The General Executive Board at the request of the International President shall have the power to call and make provision for special conventions."

Such a special convention is directed as required by the circumstances and despite an enormous cost. This use of members' dues appears warranted as the sole means by which their judgments and desires can properly be registered after open and full public debate and through constitutional means. The convention would be empowered to resolve all questions

affecting the welfare of the International Union, its constituent local unions and the membership at large and to conduct a new election of all officers.

Accordingly, and in compliance with the International Constitution, the appropriate officers are ordered to undertake and fulfill the following directives:

1. Issue a special convention call to each local union in good standing under each of the Sections of Article III of the International Constitution, with the exception of Section 1 thereof.

2. Make all necessary arrangements for holding such special convention within 90 days if practicable but in no case later than the month of June, 1958, with not less than a three-day session except as the convention itself may otherwise determine.

3. Engage a qualified independent agency, such as the Honest Ballot Association, or the Governmental Affairs Institute, to serve with the Convention Credentials Committee in determining all questions affecting the validity of delegate qualification and designation under the International Constitution and applicable local union by-laws. Said agency shall also serve to assist the International Union in the tallying of all convention votes.

4. All subjects to be acted upon by the convention shall be in accordance with Article III, Section 10, of the International Constitution, which provides as follows:

"All resolutions by local unions to be submitted to the Convention must be at International Headquarters at least thirty days prior to the opening of the Convention. Such resolutions must be submitted in triplicate and signed by all delegates-elect. Resolutions by the General Executive Board may be introduced at the Convention, provided such resolutions have the approval of a majority of the General Executive Board. All other resolutions may only be introduced with the approval of a two-thirds vote of the Convention."

The General Executive Board earnestly and respectfully requests the AFL-CIO Executive Council to consider the foregoing action as total

compliance with its directives consistent with the Constitution of the International Union. This action assures the right of the membership democratically to act upon the vital matters concerned at a convention to which delegates have been properly designated and at which they may openly and freely reach decisions in an orderly and proper manner.

Accordingly, the General Executive Board urges that any action adversely affecting the relationship between the International Union and the AFL-CIO be withheld pending the outcome of the special convention here provided. The floor of the special convention will provide a proper forum for debate and resolution. The public and press will have full and ample opportunity to observe and evaluate the processes by which judgments will be reached. The proper designation and qualification of convention delegates will be assured beyond challenge. Any prejudgment of the outcome of the special convention by present imposition of a disabling penalty upon the International Union would be unfair to the membership for whose concern all parties have expressed exclusive interest.

The General Executive Board also asks the press and public to withhold judgment so that the deliberations of the special convention may be conducted in an atmosphere of calm and reason.

The General Executive Board also calls upon the entire membership of the International Union through its local unions to recognize the serious crisis confronting the organization and those dependent upon its effective administration. Local union officers and members are requested to avoid hasty or ill-considered action which would deprive them of the opportunity to utilize the constitutional means to resolve internal differences.

The special convention will serve the declared purpose of reflecting the ultimate wisdom and final judgment of the membership in the traditional American way and should therefore receive the unqualified support of the entire membership, whose loyalty and confidence is essential.

all local unions are required to abide by the following procedures:

1. Delegates shall be elected by secret vote at a membership meeting, except where the local is a factory-shop local under Article XIV, Section 23, of the International Constitution, or where local by-laws expressly provide another manner for selection of delegates.

- A. Delegates of factory-shop locals shall be elected by the local Executive Board.

- B. Selection of delegates may vary from the foregoing only where local by-laws, authorized local merger agreements, or other duly established rules approved by the International Union prior to the date of this call expressly provide another applicable procedure.

2. Credentials submitted to International Headquarters shall be accompanied by a certification by the local President and local Secretary as to the method, date, and all pertinent details concerning selection of delegates, including specifying provisions of local by-laws, merger agreements, or other duly authorized rules which are applicable.

In the event that any delegate is challenged in accordance with Article III, Section 6, of the International Constitution, the local union and its officers shall give full cooperation to the Credentials Committee and the Honest Ballot Association by providing all information requested by the agency and/or the Credentials Committee in order to permit the Committee and the agency to conduct a full and proper investigation of the basis for the protest.

Convention Procedures

All matters concerning convention delegates shall be governed by Article III of the International Constitution, with the exception of Section 1 thereof, which is not applicable to special conventions. Accordingly, all local officers shall become familiar with and abide by the sections of Article III concerning the Basis of Representation and Vote (Section 4); Qualifications of Delegates from Local Unions (Section 5); Credentials of Delegates from Local Unions (Section 6); Expenses of Delegates from Local Unions (Section 7); and Convention Resolutions (Section 10).

With respect to the Basis of Representation in Article III, Section 4, the number of members of a union for purposes of delegate strength shall be the average monthly per capita payment that the local has paid to the International Union based on its average dues-paying membership during the 12-month period from November 1, 1956 to October 31, 1957, inclusive, as certified to the Credentials Committee by the Acting International Secretary-Treasurer.

Local officers are reminded that the duplicate credential of each delegate, specified in Section 6 of Article III, must be received by the Acting International Secretary-Treasurer of the International Union not later than February 3, 1958. Similarly, all resolutions must be received by the Acting International Secretary-Treasurer not later than February 3, 1958. In order to facilitate classification of resolutions and to avoid unnecessary printing costs each resolution must be submitted separately and deal with one subject only and must be submitted in triplicate and typewritten on one side of the paper.

Convention Accommodations

Further details with reference to railroad transportation, hotel accommodations, the Convention hall, and related matters will be transmitted to each delegate following receipt and certification of his accredited credential.

Conclusion

The General Executive Board calls upon the entire membership of the International Union through its local unions to recognize the serious crisis confronting the organization and those dependent upon its effective administration. The special convention will serve the declared purpose of reflecting the ultimate wisdom and final judgment of the membership in our traditional American way.

The International Executive Officers and General Executive Board are issuing this Special Convention Call to all our local unions in good standing to be represented in Cincinnati, Ohio, in order to make this an outstanding Convention, and to lay the groundwork and plans for still greater achievements in the solidifying of our ranks and continued

economic improvements for our members.

Fraternally yours,

ON BEHALF OF THE GENERAL EXECUTIVE BOARD

J. G. CROSS,
International President

PETER H. OLSON,
Acting International Secretary-Treasurer

NOTE: Secretaries are required to read this Convention Call at the next meeting of the local union.

STATEMENT REQUIRED BY THE ACT OF AUGUST 24, 1912, AS AMENDED BY THE ACTS OF MARCH 3, 1933, AND JULY 2, 1946 (Title 39, United States Code, Section 233) SHOWING THE OWNERSHIP, MANAGEMENT, AND CIRCULATION OF

THE BAKERS' AND CONFECTIONERS' JOURNAL - published Monthly
at Washington, D. C. for November, 1957

1. The names and addresses of the publisher, editor, managing editor, and business managers are:

	NAME	ADDRESS
Publisher:	The Bakery & Confectionery Wkrs. Int'l. Un. of Am.	Washington 6, D. C.
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2. The owner is: (if owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual member, must be given.)

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3. The known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

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4. Paragraphs 2 and 3 include, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner.

5. The average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above was: (This information is required from daily, weekly, semiweekly, and triweekly newspapers only.) _____

/s/ L. D. Ritter

Sworn to and subscribed before me this 26th day of September 1957

(SEAL)

/s/ Perry B. Metthr

December-January, 1957-58 - Bakers' and Confectioners' Journal

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BAKERY AND CONFECTIONERY WORKERS'

INTERNATIONAL UNION OF AMERICA

1145 Nineteenth Street, N. W.

Washington 6, D. C.

CONVENTION CALL

December, 1957.

TO ALL AFFILIATED LOCAL UNIONS:

GREETINGS:

Pursuant to the Resolution adopted by the General Executive Board in special session on November 14, 1957, upon the request of International President James G. Cross, a special convention of our International Union will be convened in the city of Cincinnati, Ohio, on March 3, 1958, in accordance with Article V, Section 2(j) of the International Constitution. The special convention will commence at 10 a. m., March 3, 1958, and will remain in session for not less than three days, except as the Convention itself may otherwise determine.

Article V, Section 2(j), of the International Constitution provides:

"The General Executive Board at the request of the International President shall have the power to call and make provision for special conventions."

The International President and the General Executive Board decided that a special convention should be called to meet the crisis now facing the International Union, as the matters involved are properly and exclusively the responsibility of the Union's sovereign power as provided in Article III, Section 2, of the International Constitution:

"All the sovereign power, including the legislative, executive, administrative and judicial, of the Bakery and Confectionery Workers' International Union of America shall be vested in its Convention when in session."

Accordingly, the special convention is empowered to resolve all questions affecting the welfare of the International Union, its constituent local unions, and the membership at large.

All subjects to be acted upon by the Convention shall be in accordance with Article III, Section 10, of the International Constitution, which provides as follows:

"All resolutions by local unions to be submitted to the Convention must be at International Headquarters at least thirty days prior to the opening of the Convention. Such resolutions must be submitted in triplicate and signed by all delegates-elect. Resolutions by the General Executive Board may be introduced at the Convention, provided such resolutions have the approval of a majority of the General Executive Board. All other resolutions may only be introduced with the approval of a two-thirds vote of the Convention:"

In order to assure the proper accreditation of convention delegates, the International Union has engaged a qualified independent agency, the Honest Ballot Association, to serve with the Credentials Committee in
202 determining all questions concerning the seating of delegates as provided by the International Constitution. This agency shall also assist in the tallying of all convention votes.

Election and Certification of Delegates

In order to assure certification of delegates from each local union, all local unions are required to abide by the following procedures:

1. Delegates shall be elected by secret vote at a membership meeting, except where the local is a factory-shop local under Article XIV, Section 23, of the International Constitution, or where local by-laws expressly provide another manner for selection of delegates.

A. Delegations of factory-shop locals shall be elected by the local Executive Board.

B. Selection of delegates may vary from the foregoing only where local by-laws, authorized local merger agreements, or other duly established rules approved by the International Union prior to the date of this call expressly provide another applicable procedure.

2. Credentials submitted to International Headquarters shall be accompanied by a certification by the local President and local Secretary as to the method, date, and all pertinent details concerning selection of delegates, including specifying provisions of local by-laws, merger agreements, or other duly authorized rules which are applicable.

In the event that any delegate is challenged in accordance with Article III, Section 6, of the International Constitution, the local union and its officers shall give full cooperation to the Credentials Committee and the Honest Ballot Association by providing all information requested by the agency and/or the Credentials Committee in order to permit the Committee and the agency to conduct a full and proper investigation of the basis for the protest.

CONVENTION PROCEDURES

All matters concerning convention delegates shall be governed by Article III of the International Constitution, with the exception of Section 1 thereof, which is not applicable to special conventions. Accordingly, all local officers shall become familiar with and abide by the sections of Article III concerning the Basis of Representation and Vote (Section 4); Qualifications of Delegates from Local Unions (Section 5); Credentials of Delegates from Local Unions (Section 6); Expenses of Delegates from

Local Unions (Section 7); and Convention Resolutions (Section 10).

With respect to the Basis of Representation in Article III, Section 4, the number of members of a union for purposes of delegate strength shall be the average monthly per capita payment that the local has paid to the International Union based on its average dues-paying membership during the 12 month period from November 1, 1956 to October 31, 1957, inclusive, as certified to the Credentials Committee by the Acting International Secretary-Treasurer.

Local officers are reminded that the duplicate credential of each delegate, specified in Section 6 of Article III, must be received by the Acting International Secretary-Treasurer of the International Union not
203 later than February 3, 1958. Similarly, all resolutions must be received by the Acting International Secretary-Treasurer not later than February 3, 1958. In order to facilitate classification of resolution and to avoid unnecessary printing costs each resolution must be submitted separately and deal with one subject only and must be submitted in triplicate and typewritten on one side of the paper.

CONVENTION ACCOMMODATIONS

Further details with reference to railroad transportation, hotel accommodations, the Convention hall, and related matters will be transmitted to each delegate following receipt and certification of his accredited credential.

CONCLUSION

The General Executive Board calls upon the entire membership of the International Union through its local unions to recognize the serious crisis confronting the organization and those dependent upon its effective administration. The special convention will serve the declared purpose of reflecting the ultimate wisdom and final judgment of the membership in our traditional American way.

The International Executive Officers and General Executive Board are issuing this Special Convention Call to all our local unions in good standing to be represented in Cincinnati, Ohio, in order to make this an outstanding Convention, and to lay the groundwork and plans for still

greater achievements in the solidifying of our ranks and continued economic improvements for our members.

Fraternally yours,

ON BEHALF OF THE GENERAL EXECUTIVE BOARD

/s/ PETER H. OLSON
Acting International Secretary-
Treasurer

/s/ J. G. Cross
International President

(SEAL)

NOTE: Secretaries are required to read this Convention Call at the next meeting of the local union.

327 [Filed February 20, 1958]

Washington, D. C.,
Friday, January 31, 1958.

PORTIONS OF THE
DEPOSITION OF CHARLES B. McCLOSKY.

* * * * *

330 EXAMINATION BY COUNSEL FOR PLAINTIFF
BY MR. HARRIS:

Q. Mr. McClosky, you are the Mr. McClosky who is named as a defendant in the case of Peter H. Olson v. Charles Miller, et al. ?

A. That's right.

Q. Civil Action No. 20-58? A. I am.

Q. You were the business agent and recording secretary of Local 118 of the Bakery & Confectionery Workers' International Union of America? A. That's right.

Q. How long had you been -- A. Over 25 years.

Q. You had held both those positions? A. That's right.

Q. Now, Mr. McClosky, you are familiar with the affidavit you filed in this case? A. I am.

Q. You state in this affidavit that you make it not only on your own behalf but on behalf of the other individual defendants. A. That's right.

331 Q. Did they authorize you to make it on their behalf? A. They did.

Q. Do you have anything indicating that authorization? A. No. I told them that I was making the affidavit and they agreed to go along with it.

Q. Did they read the affidavit? A. No.

Q. Did they know what was in it? A. They have read the affidavit since --

Q. Since it was made? A. That's right.

Q. They didn't know what was in it before? A. No. They had an idea of what would be in it.

Q. You state that you are directly familiar with the facts and circumstances which led up to the institution of this suit. Where did you gain such familiarity, Mr. McClosky? A. You mean all the particulars or --

Q. I am taking your statement. A. Well, the different letters that I had received from the International Union and the facts of the case that I read in the newspapers, the facts of the case which the men involved informed me of, and I attended the hearing over at the Senate Office Building, and we all knew what was going on.

Q. How did you know what was going on? A. Through the newspapers and the letters that we got from the International, the charges
332 that Sims sent while he was still secretary-treasurer of the International Union. He sent the charge to all local unions. We got a copy of that.

Q. That wasn't the letter from the International, was it? A. It was a letter from Sims as secretary-treasurer, and he was secretary-treasurer of the International when he sent it out.

Q. It is reading from what Sims said and reading the newspaper that you became familiar with these matters?

MR. GRONER: I think that is an unfair question. I think the record is clear as to what he has answered.

THE WITNESS: From correspondence we received--

MR. GRONER: Just wait, Charlie.

I think he specified all the bases and I think the record is clear on that.

MR. SCHLOSSBERG: He also said he had conversation with numerous people other than Sims.

Didn't you?

THE WITNESS: Oh, yes.

BY MR. HARRIS:

Q. Who were some of the people you had conversations with?

333 A. Well, I had conversations with Mr. Conway and Mr. DeConsini and also talked to my attorney, Mr. Kaiser.

* * * * *

334 BY MR. HARRIS:

Q. You state, Mr. McClosky, that you are making this affidavit not only on your own behalf but on behalf of Defendants Miller, Link, Hellwig, Lockwood, and May.

Now, in making this affidavit, or as business agent and recording secretary of 118, are you representing any of the other members of Local 118? A. I represent all the members of Local 118.

Q. All the members? A. That's right.

Q. You represent all the members who attended the Local 118 meeting of December 21 and who voted in favor of a resolution of so-called disaffiliation? A. I represent every member that is a member
335 of Local 118 regardless --

Q. That is not only the alleged 700 who were -- A. That's right.

Q. --who were at that meeting? A. Every member that is on the books I represent.

Q. You represent them? A. Yes.

Q. You speak for them? A. I do.

Q. In the Senate hearings to which you have referred, Mr. McClosky, in paragraph 5 of your affidavit you state that the charges which had previously been filed by Sims were in essence those that were investigated and proven by the McClellan Committee. Would you tell me in what manner these were proved by the McClellan Committee?

MR. GRONER: Wait.

I think that the written record speaks for itself. He has appended the entire transcript to his affidavit.

MR. SCHLOSSBERG: It is a conclusion that he has reached on the

basis of a document which was there for the Court to see.

MR. HELLER: Wait a minute.

Gentlemen, he can answer this question unless you choose to direct him not to. He put it in his affidavit and was willing to state it under
336 oath. Now, whether it is a conclusion or not, it is part of his affidavit.

MR. SCHLOSSBERG: I would say the record speaks for itself.

MR. HARRIS: The record of what speaks for itself?

MR. SCHLOSSBERG: The exhibit.

MR. HARRIS: If I may say so, Steve, if the exhibit speaks for itself, the exhibit to which he has taken oath speaks for itself, what do the words "and proved" mean in paragraph 5 of his affidavit? Then those words should not be included in his affidavit. He included those words in his affidavit and they must have some meaning. I would like to know what they mean.

THE WITNESS: Well, the reason I put that in there, when Senator McClellan told practically all those witnesses that the whole case was going to be turned over to the Department of Justice to find out if there was perjury in the case.

BY MR. HARRIS:

Q. He told practically all the witnesses that? A. That appeared before the committee. He told Cross for one. He told Cooper for another.

Q. Would you point out to me where he told Mr. Cooper that the whole case was going to be turned over to the Department of Justice?

A. I sat there and heard it myself.

337 Q. You have attached to your affidavit as Exhibit 1, Mr. McClosky, transcript of hearings before the McClellan Committee. A. That's right.

Q. And you have sworn to this as part of your affidavit as fully as if set out in your affidavit.

Now, would you show me where Senator McClellan told -- first, I want to know where he told Mr. Cooper that the whole case was going to be turned over to the Department of Justice. A. I didn't say he said the whole case.

Q. That is just what you just said.

MR. SCHLOSSBERG: Would you read the answer back, please.

(The answer was read as follows:

"ANSWER: Well, the reason I put that in there, when Senator McClellan told practically all those witnesses that the whole case was going to be turned over to the Department of Justice to find out if there was perjury in the case.")

BY MR. HARRIS:

Q. Would you find where Senator McClellan said anything like that to Mr. Cooper? A. I am telling you what I heard, not what I read.

Q. You have taken oath to that Exhibit 1 which you have in your hand. A. And I will stand on that oath.

338 Q. You have sworn to every word in that book. A. That's right.

* * * * *

343 Q. Mr. McClosky, you referred to the fact that those charges against Cross and Stuart were heard -- in quotation marks -- before the General Executive Board of the Union on March 7 and 8. Why do you have heard in quotation marks? A. Well, that's a notice that was sent out from the International Union.

Q. But what do the quotation marks mean? Do you mean they weren't heard? A. No. They were heard.

Q. They were heard? A. No.

Q. That was an actual hearing? A. That's right.

* * * * *

345 Q. Were you present at that hearing before the General Executive Board? A. No.

Q. What do you know about that hearing? A. All I know is the letters that were sent out by the International Union.

Q. By whom in the International Union? A. Mr. Cross.

Q. By Mr. Cross? A. To the local unions.

Q. Did you also get letters from Mr. Conway or Mr. Sims?

A. Not in regard to that.

Q. Not in regard to that hearing? A. No.

Q. So all you know about that hearing is what you read in letters?

A. That's right.

Q. The last sentence of paragraph 7 of your affidavit you state that immediately after that hearing with plaintiff himself a participant, that is, plaintiff being Olson, the board suspended Secretary-Treasurer Sims. Now, were you present at that Board meeting when this took place? A. No. They notified the local unions after it took place.

346 Q. You are not a member of the General Executive Board of the International Union? A. You know that I am not.

Q. Well, I can't testify here. A. Well, you know I am not. You shouldn't even ask that question.

Q. You never have been a member; is that right? A. No.

Q. That is right.

And you were not present at any such meeting of the Board? A. No.

Q. Do you know what the vote was on the suspension of Secretary-Treasurer Sims? A. I think it was 14-5, as far as my knowledge.

Q. It was 14 to 5, you think? A. Yes.

Q. Do you know who the five were who voted against suspension?

A. No. I wouldn't know.

Q. You wouldn't know? A. It was a secret ballot.

Q. Who told you it was 14 to 5? A. If I recall, that vote was published in the letter that was sent to the local union.

347 Q. You are not aware of the fact, Mr. McClosky, are you, that the vote by which Secretary-Treasurer Sims was suspended on March 8 was a unanimous vote of the General Executive Board? A. No.

Q. You are not aware of that? A. No.

Q. Mr. McClosky, in paragraph 11 of your affidavit you state that the McClellan Committee was obviously not satisfied with the manner in which the Board of the Bakery & Confectionery Workers' International Union had disregarded or attempted to cover up corruption. How did that dissatisfaction become obvious to you? A. Well, when they stated that --

Q. When who stated, sir? A. Mr. Cross stated that he had a

special organizer on the payroll, a person that never organized anybody, had no previous experience as an organizer. They don't pay out that kind of money to inexperienced organizer.

* * * * *

348 BY MR. HARRIS:

Q. Do you understand what the statement means in your affidavit?

A. Yes, I do.

Q. Would you explain that statement to me, sir?

349 MR. GRONER: I think the statement speaks for itself.

If you have any additional explanation you care to make, make it.

If not --

THE WITNESS: I have no additional explanation.

BY MR. HARRIS:

Q. In the same sentence, Mr. McClosky, you refer to the plaintiff himself, that is, Peter Olson, being a leading participant. In what way was he a leading participant in any of this activity on the part of the General Executive Board of the International Union of the Bakery & Confectionery Workers' -- A. He was a member of the General Executive Board. He took part in all the proceedings of the General Executive Board.

Q. He was a participant? A. That's right.

Q. How did he become a leading participant? A. Well, I personally think all 13 or 14 of them were leading participants.

Q. You mean everybody who was a participant was a leading participant? A. No. I am talking about the Board members that are so faithful.

* * * * *

350 BY MR. HARRIS:

Q. Do you know of your own knowledge whether Peter Olson attended all the Board meetings during this period of time?

* * * * *

THE WITNESS: I would assume that he was at all those Board meetings.

BY MR. HARRIS:

Q. You assume that? A. Yes.

Q. On the basis of what knowledge? A. That he is supposed to be at all the Board meetings. The letters to the local unions stated that all Board members were present at these meetings.

Q. Mr. McClosky, in paragraph 12 of your affidavit you state that:

351 "Through the testimony of other witnesses, it was proved that he . . . "--that is, Stuart -- ". . . had participated, together with Cross . . . in diverting" certain union funds.

Could you tell me who the other witnesses were? A. Not off-hand I can't remember their names; no.

MR. GRONER: If you let the witness see a copy of the transcript, if you have it, of the record.

MR. HARRIS: This is Exhibit 1 to his affidavit (handing).

THE WITNESS: Conforti was one of them and, if I am not mistaken, John Klansek was another one.

BY MR. HARRIS:

Q. Again in paragraph 12 when you say "... it was proved that he had participated . . ." this is a conclusion of yours that it was proved?

A. Yes. He gave back the Cadillac.

Q. Who gave back what Cadillac? A. Mr. Cross gave back the Cadillac.

Q. Mr. McClosky, in paragraph 14 of your affidavit you refer to hearings before the AFL-CIO Ethical Practices Committee. Were you present at those hearings, Mr. McClosky? A. No, I was not.

Q. You were not.

You state that Olson was present. A. Yes.

352 Q. How do you know that? A. I was told that he was present.

Q. By whom were you told? A. By Mr. Conway.

Q. Mr. Conway told you that? A. Yes.

Q. When did he tell you that? A. Right after the hearing.

Q. In other words, this is something in your affidavit you are testifying to on the basis of what somebody has informed you? A. No.

It came out in the newspapers and stated that the entire Board of the Bakery & Confectionery Workers was there.

Q. So you learned it from Conway and the newspapers? A. That's right.

Q. In paragraph 15 you state that the Ethical Practices Committee rendered a full report to the Executive Council of the AFL-CIO, reviewing fully the evidence which had been presented. How do you know they reviewed fully the evidence which had been presented? A. I read the report of the --

Q. But you didn't hear the evidence that had been presented?

353 A. I told you I was not present.

Q. You were not present.

So if you read the report, you read only what was in the report and you couldn't know, could you, whether it was a full statement of the evidence or not? A. Well, I don't think they would put out a false report.

Q. I am not suggesting that it was a false report. I am questioning whether you know what you are saying in your affidavit when you say they reviewed fully the evidence which had been presented. A. I am taking their report, that they stated in their report that they reviewed.

Q. So it is on the basis of their report that you make that statement? A. That's right.

Q. Now, you state that:

"The committee" ---the Ethical Practices Committee ---" concluded that the BCW was dominated by corruption and corrupt influences."

Where did you find that conclusion? A. Their mandate to the Bakery & Confectionery Workers' International Union was that within three months a new convention to be held of the Bakery & Confectionery Workers' International Union and that President Cross should not be a
354 candidate for the presidency of the Bakery & Confectionery Workers' International Union of America.

Q. This was in the report of the Ethical Practices Committee?

A. No. That was in the report of the General Executive Board.

Q. I am asking you about the report of the Ethical Practices Committee concerning which you testify in paragraph 15 of your affidavit.

* * * * *

355 THE WITNESS: I answered the question. I told you I read the report.

BY MR. HARRIS:

Q. Did you find anything in the report that the Committee concluded that the Union was dominated by corruption and corrupt influences?

A. To my recollection, yes.

Q. How long ago did you read that report, Mr. McClosky? A. Oh, several months ago.

Q. You are sure that is not your own conclusion you are stating there in paragraph 15? A. No, it is not.

Q. You are stating that as the Committee's conclusion? A. That's right.

356 Q. You are familiar with the fact that the Committee made no such conclusion? A. No, I am not.

Q. You are not.

In paragraph 16 of your affidavit you refer to a November 14 meeting of the General Executive Board of the Bakery & Confectionery Workers' International Union. A. Yes.

Q. You state that:

"A majority with plaintiff participating, voted not to comply with the AFL-CIO directives."

Were you present at that board meeting? A. No.

Q. You were not. A. But I got a letter from that Board meeting.

Q. From the Board meeting you got a letter? A. Yes.

Q. Signed by whom? A. It was not signed.

Q. Directed to whom? A. To the local unions.

Q. Sent out by whom? A. That I don't know. Because the Board met on a Friday afternoon and we got the letter in the mail Saturday morning, the action of the Board all printed up.

Q. Was it a printed letter? A. Yes.

357 Q. Was it on a letterhead? A. It was on a letterhead of the Bakery & Confectionery Workers' Union.

Q. On the International Union letterhead? A. Yes, yes.

Q. You are basing this statement on what you read in such a letter?

A. On a directive from the Bakery & Confectionery Workers' International Union, that they were not going to comply with the directive of the AFL.

Q. It said that in the letter? A. That's right.

That Mr. Cross had also said Mr. Cross was elected by the members and it was up to the members to take him out if they so see fit.

Q. You are sure you are not referring to a letter sent out by the Committee to preserve integrity? A. No. It was sent out -- the Board met on November 14th about 2:00 o'clock in the afternoon, to my recollection.

Q. How do you know that? A. They stated they were having a Board meeting. They sent us notice they were having a Board meeting in Washington at the Dupont Plaza Hotel. And Saturday morning in the mail we got this letter from the General Executive Board on that session
358 from the Bakery & Confectionery Workers' International Union of America.

* * * * *

MR. HARRIS: I was just going to say, would you produce that letter to which Mr. McClosky is referring? I don't mean this moment. Will you produce it for us?

MR. SCHLOSSBERG: If it can be found.

* * * * *

363 BY MR. HARRIS:

Q. Mr. McClosky, in paragraph 20 of your affidavit you state that the AFL-CIO expelled the BCW on December 12, 1957. How do you know that? A. Well, I was in Atlantic City at the time.

* * * * *

364 BY MR. HARRIS:

Q. Mr. McClosky, do you know as a fact that Mr. Cross did not
365 make repayments until his transactions were exposed?

MR. KAISER: I direct him not to answer.

* * * * *

366 BY MR. HARRIS:

Q. Mr. McClosky, do you not know as a fact that Mr. Cross had
367 completely paid one loan received from the bakery industry employer you referred to in paragraph 22 before there was any expose of any transactions? Do you not know that as a fact? A. No.

Q. You don't.

Mr. McClosky, do you not know as a fact that on page 2985 of Exhibit 1 attached to your affidavit, which you have sworn to, that there is a statement under oath by the bakery industry employer you referred to in paragraph 24 which indicates that one loan was repaid on or about October 3, 1955? Do you not know that as a fact? A. Do you expect me to remember everything that is in that 600-page book.

Q. You have sworn to it under oath. A. That's right, I have sworn to it.

* * * * *

368 BY MR. HARRIS:

Q. Mr. McClosky, what is darkness at noon?

MR. GRONER: I direct him not to answer that question.

369 MR. KAISER: Off the record.

(Discussion off the record.)

BY MR. HARRIS:

Q. Are you familiar with the phrase "darkness at noon," Mr. McClosky?

MR. KAISER: I direct you not to answer.

MR. HARRIS: He stated earlier he was familiar with his affidavit. I don't know why you should be sensitive about his answering the question.

MR. KAISER: Is the question put to educate counsel or give a little cultural background?

MR. HARRIS: We like that literary flavor, Henry. We appreciate that. This is Mr. McClosky's affidavit.

BY MR. HARRIS:

Q. Mr. McClosky, in paragraphs 24 and 25 of your affidavit you discuss diverting union funds for improper purposes, accounting irregularities, and improprieties, and so on.

Who was in charge of the finances of Local 118 of the Bakery & Confectionery Workers' International Union of America?

MR. GRONER: I would like to inquire as to the relevancy of that question.

MR. HARRIS: Well, the relevancy is, in the first place, that I want to see to what extent Mr. McClosky is an appropriate judge of what
370 are improper union financial arrangements and how much he knows about the financial arrangements of his own union.

MR. KAISER: You are really stating what you are trying to find out. You haven't stated what the relevancy of the question is.

MR. HARRIS: In his affidavit he is passing judgment of a sort on other people's financial dealings, and I want to know what his have been with respect to this union.

MR. KAISER: : He is not passing judgment. He is accepting the judgment of others.

I direct him not to answer that question.

BY MR. HARRIS:

Q. Mr. McClosky, were you a paid employee of Local 118 of BCW? A. Yes.

Q. What was your salary? When I say "was," I want to say prior--

MR. KAISER: Just a moment.

What is the relevancy of that question?

MR. HARRIS: I think we are entitled to examine into Mr. McClosky's own relationship to his union. I think we are entitled to examine into his veracity.

MR. KAISER: By inquiring into his pay?

MR. HARRIS: Yes.

371 MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Mr. McClosky, in addition to your salary did you receive expense allowances from Local 118?

MR. KAISER: I direct him not to answer. Entirely and patently and flagrantly designed to oppress and harass on a completely irrelevant ground.

BY MR. HARRIS:

Q. Did Mr. Hellwig receive expense allowances from Local 118?

MR. KAISER: Same direction. I will direct him not to respond to this whole line of inquiry, Abe.

BY MR. HARRIS:

Q. Mr. McClosky, who is June -- Woolwine, is it?

MR. KAISER: Same direction.

MR. HARRIS: Could I at least know what her name is?

MR. KAISER: Yes.

BY MR. HARRIS:

Q. W-o-o-l-w-i-n-e, is that it? A. Yes.

MR. HARRIS: You directed him not to answer who she is?

MR. KAISER: Yes.

BY MR. HARRIS:

Q. Did she receive in addition to a salary \$100 monthly expense allowance from Local 118?

372 MR. KAISER: Same direction.

BY MR. HARRIS:

Q. Mr. McClosky, were you required to account to Local 118 for this \$100 monthly expense allowance you received from it?

MR. KAISER: I direct him not to answer for the same reason.

BY MR. HARRIS:

Q. Were Mr. Hellwig or Miss Woolwine required to account --

MR. KAISER: Same direction, same reason.

BY MR. HARRIS:

Q. Mr. McClosky, when did James Ax die?

MR. KAISER: I direct him not to answer.

MR. HELLER: Look, if I may interpolate here, we might have this on the record anyway. You can direct him not to answer future questions --

MR. SCHLOSSBERG: He was a defendant who was dropped because of death.

BY MR. HARRIS:

Q. When did James Ax die, Mr. McClosky? A. I wouldn't have the exact date because I don't --

Q. Approximately. A. I would say about six months ago.

MR. KAISER: Just a minute. Off the record.

(Discussion off the record.)

373 MR. KAISER: All right, back on the record.

BY MR. HARRIS:

Q. Mr. McClosky, why was James Ax paid \$20 plus trustee expenses in October 1957?

MR. KAISER: I direct him not to answer.

* * * * *

375 BY MR. HARRIS:

Q. Mr. McClosky, did you bring with you the charter of Local 118 of the Bakery & Confectionery Workers? A. It is here.

Q. Could we see it, please?

MR. SCHLOSSBERG: I will get it.

(Document produced.)

* * * * *

376 THE WITNESS: That is not the original charter.

MR. HELLER: Do you have the original charter?

THE WITNESS: No, we don't.

MR. SCHLOSSBERG: It was lost.

It says at the bottom that it was replaced, if you notice. That is written in.

(Discussion off the record.)

BY MR. HARRIS:

Q. Mr. McClosky, I am referring now to the charter that you have produced for Local 118 of the Bakery & Confectionery Workers' International Union of America. It is dated February 12, 1893. In the lower left-hand corner it is marked "Duplicate. Original issued December 26, 1890." Mr. Kaiser has been checking over my shoulder as I read from it.

Now, wasn't the union issued a charter back in 1886? Wasn't the Local, that is, issued a charter back in 1886? A. I was told that they were.

Q. You were told that there was an earlier charter? A. That's right.

Q. You don't have that? A. No.

Q. The records of the Local don't have that? A. No.

377 MR. SCHLOSSBERG: That even pre-dates the first copy.

MR. HARRIS: Yes. This is 1890.

MR. SCHLOSSBERG: Yes. It probably was lost, too, I guess.

BY MR. HARRIS:

Q. Mr. McClosky, would you look at this and tell me whether any place in there you find any reference to the American Federation of Labor?

MR. KAISER: Well, it speaks for itself. Either it does or it doesn't.

THE WITNESS: It doesn't.

MR. HARRIS: It does not?

THE WITNESS: No.

* * * * *

BY MR. HARRIS:

Q. Now, in paragraph 30 of your affidavit you make the statement, Mr. McClosky, that a fundamental condition was that there would be affiliation with the AFL and AFL-CIO. How was this fundamental condition expressed? A. You mean by my Local or by the International Union?

Q. By your Local. A. Well, we have been a member of the Washington Central Labor Union ever since its inception, and it states

in our by-laws that the local union must be affiliated with the Washington
 378 Central Labor Union. That's the body of labor organizations in
 the city of Washington chartered by the American Federation of Labor
 and later by the American Federation of Labor-CIO. Even in our due
 books the first heading is AFL, even before the Bakery & Confectionery--

* * * * *

BY MR. HARRIS:

Q. Mr. McClosky, at the meeting of Local 118, which was held
 on December 21, 1957, was a roll call taken? A. No. We don't have
 roll call.

379 Q. You don't take roll calls? A. No.

Q. Approximately how many people were there? A. About 700.

Q. How do you know that? A. I counted them.

Q. You counted them? A. Yes.

Q. Were they 700 dues-paying members? A. Oh, yes.

Q. How do you know they were dues-paying members? A. I
 knew each and every one of them.

Q. Each and every one of the 700? A. Yes.

Q. Do they have to show any evidence of payment of dues before
 they get into the hall? A. No.

Q. Can anybody walk in? A. Not anybody. We have a sergeant-
 at-arms on the door that knows all the members.

Q. If a stranger walked in, he wouldn't be admitted? A. No.

Q. Who is the sergeant-at-arms? A. Howard Shore.

Q. Howard who? A. Shore.

380 Q. Shore? A. Yes.

Q. Was he there that night? A. That day.

Q. That day? A. It was in the afternoon.

Q. Was the resolution that was passed that day -- was the vote
 on that by secret ballot? A. Rising vote.

Q. By a rising vote? A. Yes.

Q. Were the number of people who rose in favor of the resolution
 counted? A. Yes.

Q. How many voted in favor of the resolution? A. It was unanimous. Everybody stood. I may correct myself. When everybody stood they didn't count. When everybody rises they don't bother to count the vote.

Q. There was no one left seated? A. No.

Q. Nobody abstained from voting? A. No.

Q. Did you ask for a "No" vote? A. Oh, yes.

381 Q. You did ask for a "No" vote? A. That is in the minutes. The minutes were stenographically taken down.

Q. Do you always have a stenographer-reporter at your meetings?
A. No.

Q. How did you happen to have one this time? A. Because I wanted to make sure that everything that was said and done would be down proper.

Q. Mr. McClosky, in paragraph 45 of your affidavit you state that "I believe that there is not one member who desired to retain a charter with BCW."

On the basis of what did you form that belief? A. Well, I had talked to a great majority of the members. They expressed their opinion to me. There was only one that I hadn't talked to. Maybe I erred when I said there wasn't one.

Q. Who was the one you hadn't talked to? A. Andy Myrup.

Q. You mean you had talked to all the other 1,100 members?

A. I didn't say all of them.

Q. You said "There was only one I hadn't talked to." A. I didn't mean that. I was saying there was only one I couldn't speak for; let me put it that way.

382 Q. You speak for all the other 1,100 members? A. Yes.

Q. But not for Andy Myrup? A. No, I couldn't.

Q. Now, there were approximately 400 members who were not present at that meeting on December 21; is that right? Approximately.

A. Well, yes. That's right.

Q. Had you talked to any of them? A. Yes, I had.

Q. Before the meeting or after the meeting? A. Well, it had been a discussion -- you know, some Saturdays some members work, some

Saturdays other members don't work. It had been a discussion in our Union meetings about what was going on. In fact, we had one member that took this thing very seriously. He has been a member of the General Executive Board for years. He is now General Executive Board member emeritus. John Geiger.

Q. John who? A. John Geiger, G-e-i-g-e-r. .

And the day -- there might be something else for people to look toward -- the day that the International Union took us under trusteeship-- he is 89 years old -- he went to bed and he hasn't got out of bed since. And knowing that man and his unionism, and he is one of them that hopped
383 freight trains -- he didn't have a \$58 hotel room or \$50 cabana, or anything like that -- he hopped freight trains to get from one town to another to carry out his duties as a General Executive Board member.

Q. You are not sure that there is not, except for Andy Myrup, other people that want to retain a charter with the BCW, are you?

A. I couldn't swear to that; no.

Q. It might be as many as seven or eight?

MR. GRONER: As of this time.

THE WITNESS: As of this time, I doubt that very much.

BY MR. HARRIS:

Q. You doubt that very much? A. Yes.

Q. As of December 21? A. Because they send out misleading information.

* * * * *

384 BY MR. HARRIS:

Q. Mr. McClosky, in paragraph 46 of your affidavit you state that the issue is a simple one, that it is honesty or dishonesty, a clean union or a corrupt union. Has Local 118 been a clean union, Mr. McClosky? A. Yes, sir.

Q. No corruption there? A. No, sir.

Q. No misuse of union funds?

MR. KAISER: I direct you not to answer that question for the same reasons that were advanced when a similar line of harassing inquiry

was instituted sometime ago.

BY MR. HARRIS:

Q. In Local 118 there have not been any unaccountable expense accounts?

MR. KAISER: I direct the witness not to answer.

* * * * *

387 Q. Mr. McClosky, when did Local 118 submit their last per capita dues payments to the International? A. To my knowledge, for the month of October.

Q. Those were submitted when; do you know? A. On the 31st day of October.

388 Q. Mr. McClosky, who is Morris Abrams? A. Morris Abrams is a friend of mine.

* * * * *

389 BY MR. HARRIS:

Q. Mr. McClosky, are you one of the officers of Local 118, Bakery & Confectionery Workers' International Union of America, or were you prior to the appointment of the trustee one of the officers of the Bakery & Confectionery Workers Union who was authorized to sign checks of that Local? A. Yes.

Q. Who was the other such officer? A. President Charles Miller and the Financial Secretary, Adolf Hellwig.

Q. The three of you were authorized? A. Any two of the three.

Q. Any two of those three could sign checks? A. Yes.

Q. Upon receiving notice of the appointment of Peter H. Olson as trustee, did you, together with Mr. Hellwig or Mr. Miller withdraw
390 some of the funds of the Local from some of the banks or building associations in which the funds were located? A. Yes, I did.

Q. You did? A. Yes.

Q. May I ask what the purpose of that was?

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. How did such withdrawals take place? I mean mechanically.

What did you do to withdraw the funds?

MR. KAISER: I direct him not to answer.

MR. LONG: He already testified he withdrew funds.

MR. HARRIS: You don't want him to tell how?

MR. KAISER: That is right.

BY MR. HARRIS:

Q. In withdrawing such funds, did the particular bank or building association write a check payable to you and Mr. Hellwig?

MR. KAISER: I direct him not to answer.

* * * * *

394

BY MR. HARRIS:

Q. Is Morris Abrams an officer of the Local?

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Is he a lawyer for the Local?

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Is he a trustee for the Local?

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Now, Mr. McClosky, isn't it true that Morris Abrams is an attorney?

MR. KAISER: I direct him not to answer, and I will direct him not to answer any questions regarding Morris Abrams because of the reasons suggested by inquiring counsel as to the purpose of these questions.

BY MR. HARRIS:

Q. Isn't it true that Mr. Morris Abrams is an attorney to whom Local 118 has in the past paid fees?

395

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Mr. McClosky, I am about to show you a check of Washington Permanent Building Association drawn on the Second National Bank,

dated December 18, 1957, in the amount of \$7,129.77, payable to Bakers Local Union 118, Adolf Hellwig, Financial Secretary-Treasurer; Charles B. McClosky, Recording Secretary.

I ask you whether you received such a check from the Washington Permanent Building Association.

MR. KAISER: I direct him not to answer.

BY MR. HARRIS:

Q. Mr. McClosky, I show you--

MR. KAISER: And I would point out that counsel having possession of such checks is going into a whole extensive line of inquiry to find out what he knows.

MR. HARRIS: I do not have possession of such checks.

MR. KAISER: Or photostatic copies.

MR. HARRIS: I have what purports to be a photostatic copy.

I would like the man who received it, if there was such a check, to identify it. If he can't identify it, why, maybe there is no such check.

BY MR. HARRIS:

396 Q. I show you, Mr. McClosky, what purports to be a photostatic copy of the reverse of that check, which contains endorsements as follows -- what purport to be endorsements as follows: "Pay to the order of Morris A. Abrams, Trustee, Bakers Local Union 118, Adolf Hellwig," signed, and then "Adolf Hellwig, Financial Secretary-Treasurer; Charles M. McClosky," signed, and then "Charles B. McClosky, Recording Secretary," typed in.

Then further endorsement "For deposit to account of Morris Abrams, Trustee."

And I ask you if that is a photostat of your signature in the endorsement to that check.

MR. KAISER: I direct him not to answer.

If you want to look at it for your own --

MR. HARRIS: For the record, I would like to identify the photostat to which I have just been referring, the check, and the reverse of the check, as an exhibit attached to the motion of Washington Permanent

Building Association to dismiss filed in this case, and it is marked Defendants' Exhibit B.

Mr. McClosky, I show you a document attached to the same motion of Washington Permanent Building Association and marked Defendants' Exhibit A to said motion, which purports to be a withdrawal receipt from the Washington Permanent Building Association in the amount of \$7,129.77, and purports to be signed by you and by Mr. Hellwig. Would you look at this, please, and tell me whether that is your signature on that withdrawal receipt.

397 MR. KAISER: Off the record for a moment.

(Discussion off the record.)

MR. KAISER: I direct the witness not to answer.

BY MR. HARRIS:

Q. Mr. McClosky, did you withdraw any other amounts from any other banks or building associations in the same way that you withdrew this amount from Washington Permanent Building Association?

MR. KAISER: I direct the witness not to answer.

BY MR. HARRIS:

Q. Did you endorse any other checks over to Morris Abrams?

MR. KAISER: I direct the witness not to answer.

BY MR. HARRIS:

Q. Or to Morris Abrams, trustee?

MR. KAISER: Same direction.

* * * * *

205 [Filed February 10, 1958]

**MOTION TO STRIKE ALL EXCEPT SPECIFIED
PORTIONS OF AFFIDAVIT OF CHARLES B.
McCLOSKY**

1. In support of their opposition to plaintiff's motion for a preliminary injunction, defendants Miller, Link, McClosky, Hellwig, Lockwood, and May have submitted the affidavit of Charles B. McClosky. Plaintiff moves to strike the McClosky affidavit (except for certain

portions thereof specified below) and to expunge it from the record of this case for the following reasons:

(a) The affidavit together with its exhibits is prolix.

(b) The affidavit is replete with immaterial, irrelevant, impertinent, and scandalous matter, designed only to create a prejudicial atmosphere in which plaintiff's motion can be heard.

(c) The affidavit is a melange of fact, rumor, and the conclusions, surmises, opinions, arguments, and imaginings of McClosky.

(d) The affidavit, despite the fact that McClosky has taken an oath to it in its entirety, contains many statements which on their face are not such that McClosky can swear to them as facts.

206 (e) The affidavit attempts to repeat in full under McClosky's oath and thereby to assert the truth of the contents of various documents not susceptible of verification on his personal knowledge, e.g. a newspaper editorial (Exhibit 4); a 67-page transcript of certain proceedings of the AFL-CIO convention (Exhibit 2); and a 600-page transcript of hearings before the McClellan Committee (Exhibit 1).

2. This motion to strike does not extend to the following portions of the McClosky affidavit:

Paragraphs 1, 40-45, inclusive, 48, 50, 69-71, inclusive, 74 except for the last two paragraphs thereof, and 75 and Exhibit 3.

By not including said portions of the McClosky affidavit in this motion to strike, it is not intended to indicate approval of or agreement with any of said portions or to concede the truth or accuracy of any of the matters stated therein.

/s/ Abraham J. Harris

/s/ John V. Long

/s/ James H. Heller

1026 Woodward Building
Washington 5, D. C.
Attorneys for Plaintiff

[Filed February 12, 1958]

AFFIDAVIT OF ADOLF HELLWIG

ADOLF HELLWIG, being duly sworn, deposes and says:

(1) I am one of the defendants in the above captioned case; I am financial secretary and treasurer of Local 118, American Bakery and Confectionery Workers' International Union, AFL-CIO, (hereinafter referred to as ABC), formerly affiliated with the Bakery and Confectionery Workers' International Union of America, (hereinafter referred to as BCW).

(2) All moneys, assets and records in my care and in the care of the other individual defendants, who are all former members and officers of Local 118, BCW, and now members and officers of Local 118, ABC, AFL-CIO, are being used only for legitimate trade union purposes. We shall continue to use all funds and assets of the Local only for the benefit of the members of the Local as a whole, as we always have.

(3) All the other officers of Local 118, ABC, AFL-CIO, and myself are administering the collective bargaining machinery in the bakery and confectionery industries in Washington. We are processing grievances, holding meetings of union members and meeting with employers in order to mutually resolve problems in labor relations. In short, we are operating this Local as a functioning labor organization.

297 (4) In the exercise of my official capacity as financial secretary-treasurer of the Local, I read the statement of Peter H. Olson in paragraph 9 of his supplemental affidavit alleging, in effect, that certain named members of Local 118 have authorized the BCW to represent them in legal proceedings. I have personally investigated the statements contained therein. The official records of Bakers Union 118 are in my custody. I have examined said records and otherwise ascertained the facts, as to each name contained in Mr. Olson's affidavit.

(5) Of the nine names listed by Plaintiff Olson in that paragraph, only two, James A. Dawson and Vincent M. Russell, are members in good standing and have, to the best of my knowledge and belief, voluntarily

given the authorizations referred to, apparently knowing and understanding what they were doing, and not having withdrawn their authorization.

(6) Two of the names listed by Plaintiff Olson are not even members in good standing. Clydie L. Clopton is not a member of Local 118 in good standing. She joined Local 118 in October, 1957. On December 20, 1957, she paid \$2.00 for a retiring card, and under our laws is not eligible to take an active part in the Local's affairs until she returns to active membership. At present, she is carried on the retired list.

Joseph Motley is not a member in good standing of Local 118. He last paid dues on August 8, 1957.

(7) As for the other five listed by Plaintiff Olson, each received a letter, purporting to be from Local 118, soliciting authorization for litigation and statements of loyalty on behalf of BCW. Each believed that the letter was sent by the regular officers of Local 118, and that sending the card was desirable from the viewpoint of Local 118.

298 Each of these members realized the truth of who had solicited and who would benefit from their actions, either by conversation with their fellow workers, or at the membership meeting of Local 118 on February 1, 1958, or on being personally visited by representatives of BCW.

(8) I know that the above is true, as a result of personal conversations with Pete Kladias, George T. Miles and George Washington Walker, and from being told by other officers or employees in the regular course of my duties about conversations with Jessie Covington and Alexander Davis.

(9) Each of these five has voluntarily signed and executed an affidavit withdrawing any authorization given to BCW, personally ratifying and endorsing the action of disaffiliation from the BCW and affiliating with the ABC, and personally expressing the wish to stay with Local 118, ABC, AFL-CIO. These affidavits were signed and executed without any promise of any benefit or threat or other pressure and were completely voluntarily and knowingly executed.

(10) The affidavit of Jessie Covington is attached hereto as Exhibit "A", and is incorporated herein.

(11) The affidavit of Alexander Davis is attached hereto as Exhibit "B", and is incorporated herein.

(12) The affidavit of Pete Kladias is attached hereto as Exhibit "C", and is incorporated herein.

(13) The affidavit of George T. Miles is attached hereto as Exhibit "D", and is incorporated herein. A diligent search of the records of Local 118 reveals that there is no such member in Local 118 as "George T. Meleo".

(14) The affidavit of George Washington Walker is attached hereto as Exhibit "E", and is incorporated herein. There is no J. Washington Walker in Local 118.

299 (15) To the best of my knowledge and belief, each member of Bakers Union 118 has received a series of letters, purporting to be from Local 118, and signed by Olson, soliciting authorizations for litigation and statements of loyalty to BCW. Further, members of Bakers Union 118 have been personally visited by representatives of BCW who tried to pressure them into signing these cards. Obviously, the vast majority resisted this pressure and refused to sign any cards on behalf of BCW. I think this is a very poor showing -- after all this effort and this beating of the bushes, Olson comes up with nine signatures, and all but two just don't stand up.

/s/ Adolf Hellwig

[JURAT, dated February 11, 1958.]

418 February 24, 1958

C. A. No. 20-58

Olson, Plaintiff.

Miller, et al., Defendant.

Argued 2/25/58 motion to dismiss of individual defendants. (Other motions to dismiss submitted on P & A.)

Court's action 2/24/58 motion to dismiss, of individual defendants
 GRANTED: (1) Plaintiff without standing to sue; (2) failure to join indispensable parties; (3) failure to state claim on which relief can be granted (a) labor dispute, and (b) unclean hands. All other motions filed herein, as result thereof, become moot.

/s/ R. B. Keech - Judge
 2/25/58

(x) 2/25

420 [Filed February 27, 1958]

ORDER DISMISSING COMPLAINT

This cause came on to be heard on the motion of the individual defendants to dismiss the complaint. Upon consideration of the oral argument and all pleadings and papers filed by all parties, and the Court being fully advised in the premises, it is hereby, this 26th day of February, 1958,

Adjudged, Ordered and Decreed that said motion be, and it is hereby, granted; and be it further

Adjudged, Ordered and Decreed that the Complaint be, and it is hereby, dismissed on each and all of the following grounds:

1. Plaintiff, suing as Special Trustee of Local 118, Bakery and Confectionery Workers' International Union of America and as Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America, has no standing to sue;

2. There has been a failure to join indispensable parties;

3. The Complaint fails to state a claim upon which relief can be granted, because (a) a labor dispute is involved, and (b) complainant comes with unclean hands; and be it further

421 Adjudged, Ordered and Decreed, that all other motions filed herein, as a result thereof, have become moot and are therefore denied.

Date: 2/26/58

/s/ R. B. Keech
 U. S. D. J.

Seen: /s/ Abraham Harris
 Attorney for Plaintiff

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

PETER H. OLSON,
as Special Trustee of Local 118,
Bakery and Confectionery Workers' International Union of America,
and as Acting Secretary-Treasurer of the
Bakery and Confectionery Workers' International Union of America,

Appellant,

v.

CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABRAHAM J. HARRIS

JOHN V. LONG

JAMES H. HELLER

1026 Woodward Building
Washington 5, D C.

Attorneys for Appellant

United States Court of Appeals
for the
District of Columbia Circuit

FILED JUL 17 1958

Joseph W. Stewart
CLERK

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and as Acting Secretary-Treasurer of the
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CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an order of the District Court (Judge Keech) dismissing appellant's complaint (J.A. 107). Appellees were all persons or corporations either resident, doing business or found within the District of Columbia. The District Court's jurisdiction was invoked pursuant to sections 305 and 306 of title 11 of the District of Columbia Code (1951 ed.) (J.A. 2). That court's order dismissing the complaint was entered February 27, 1958 (J.A. 107); the notice of appeal was filed March 14, 1958; and the appeal was docketed in this Court on April 23, 1958. This Court's jurisdiction is invoked under 28 U.S.C. 1291.

STATEMENT OF THE CASE

The court below (Keech, J.) granted the motion of the individual appellees, Miller, Link, McClosky, Hellwig, Lockwood, and May,¹ to dismiss the complaint (J. A. 32). Since the factual allegations of appellant's verified complaint (J. A. 1-14) therefore constituted the basic record before the Court below, it is important to summarize those allegations at the outset.

(a) The Allegations of the Complaint

This is a suit for breach of a written contract to which appellees were parties and for misappropriation of property, custody of which was formerly vested in appellees pursuant to that contract. The contract was the 1956 Constitution² of the 150,000-member international labor union known as the Bakery and Confectionery Workers' International Union of America (hereafter "the International"). That Constitution was attached to the complaint as Exhibit A (see J. A. 14) and is appended to this brief as Appendix C for the convenience of the Court. The alleged breach and misappropriation concerned the name, good will, books, records, funds, and other assets of the International's

¹ Hereafter referred to merely as "appellees." The remaining appellees are local banks and savings institutions who were joined in this action merely as depositaries of funds in dispute, and will be referred to collectively as the "bank appellees."

² On March 5, 1958, in a Special Convention called pursuant to a November 14, 1957, resolution of the International's General Executive Board and to a Convention Call issued December 17, 1957 (J. A. 76-80) the 1956 International Constitution was amended in certain respects, none of which is here material. See affidavit of appellant attached to this brief as Appendix B. Of course these amendments were not in effect at the time of the events alleged in the complaint and are not relied upon by appellant. The affidavit is appended for the information of the Court because the events recited in it supplement matters which were of record before the District Court. See supplemental affidavit of Peter H. Olson filed in the court below, (J. A. 66 ff.)

Local No. 118 (hereafter "Local 118"), its subordinate affiliate for the Washington, D. C., area. Appellees had been officers of Local 118 prior to the decisive events in dispute, and the complaint alleged in substance that pursuant to a conspiracy among themselves and others they had appropriated for their own uses the name, good will, books, and assets of the local in violation of the International Constitution. As parties to the contract embodied in the Constitution, appellees had bound themselves among other things to accept the provisions of the Constitution and "the laws, policies and directives" of the International (Art. XVII, sec. 3, App. C, p. 39); to maintain the Constitution and the dignity of the International (Art. XVII, sec. 4, App. C, p. 39); to further the objectives of the International (Ibid); and to refrain from joining, aiding, or comforting any organization hostile to the International (Ibid). As officers of Local 118, appellees were further bound to preserve and guard all Union property left in their charge. (Art. XIV, sec. 9, App. C, p. 31). Moreover, Article XIV, sec. 8 of the Constitution (App. C, p. 29) provided that:

"All funds and property of the local union shall be held by it in the name of the local union to be used only for the purpose of effectuating the objectives of this Constitution and in accordance with its provisions."

Local 118 had substantial property, consisting of bank deposits and liquid assets exceeding in value \$32,000, its books and records, its well-known name, its good will, and its collective bargaining agreements (J.A. 3, 7). It was these assets which appellees misappropriated. Some time prior to mid-December appellees and others entered into a plan to transfer the name, membership, and assets of Local 118 to a new organization, rival to the International Union, and known by a transposition of words as the American Bakery and Confectionery Workers' International Union (hereafter "ABC"). A part of this plan was to be the purported secession and/or dissolution of Local 118, notwithstanding the Constitutional provisions (Art. XIV, sec. 22, App. C, p. 36) that

"no local can dissolve while seven members remain in good standing and desire to retain the charter." (J. A. 4)

The purported secession or dissolution was carried out by appellees. The books, records, and other assets of Local 118 were seized by appellees, and its funds secreted (J. A. 5-7); at least \$15,500 of these funds were transferred from old bank accounts of the local on or very shortly after December 19, 1957 (J. A. 7). Appellant demanded return of the local's books, records, and assets on December 20, 1957, but his demand was refused by appellees. Rather, appellees thereafter held themselves out as officers of a Local 118 now affiliated with the ABC and represented to the public in general, including employers with which Local 118 had collective bargaining contracts, that the local had seceded from the International (J. A. 5, 8).

Appellant brought this suit in two distinct capacities to secure redress for the foregoing acts of appellees; it was a mere fortuity that both capacities were lodged in the same man. First, appellant sued as the duly designated Special Trustee of Local 118. Article XX, sec. 4 of the Constitution (App. C, p. 48) provides for the designation of such a Trustee and further provides that the Special Trustee shall assume the functions of all officers of the local and "shall take possession of all the funds, books, papers and other property" of the local (Art. XX, sec. 4 (c) and (d)). Appellant alleged that at least seven members in good standing of Local 118 desired to retain its charter (J. A. 4) and therefore any attempt to dissolve the Local or to effect its secession as such (as distinguished from the secession or disaffiliation of individual members) was a nullity, in plain breach of the International Constitution. It was in this capacity that appellant made his December 20, 1957, demand upon appellees, which was defied.

Secondly, and alternatively, appellant sued as the Acting Secretary-Treasurer of the International and, therefore, the supervisor and custodian of its assets. Art. XIV, sec. 8 of the Constitution (App. C, p. 30)

provides that even should a local union validly "dissolve, secede, or have its charter revoked all its money and property shall revert to the ownership of the International Union", and the Secretary-Treasurer is authorized to secure its turnover.

The complaint alleged that appellees' conduct, in addition to constituting a misappropriation of Local 118's assets, had caused confusion to its membership, to the employers having contracts with the local, to others having business relations with it, and to the community at large (J. A. 8, 9). It also alleged that appellees had already wasted and dissipated some of the misappropriated funds, and that appellant had no adequate remedy at law, both because of the irreparable injury already being done and which would continue to be done to Local 118, the International and their memberships, and also because Local 118's property would be dissipated and appellees would be without means to respond to a judgment against them for damages (J. A. 10, 11). The complaint sought to enjoin appellees from exercising any dominion over the books, records, and property of Local 118 and to require them to turn them over to appellant; and to enjoin appellees from representing themselves as officers of Local 118, from representing to others that Local 118 had ceased its affiliation with the International, from using the name "Local 118", from collecting dues from Local 118's members, and from interfering with or conspiring against Local 118's operations. Appellant also sought an accounting from appellees of all money and other property of Local 118 received and disbursed or disposed of since March 1, 1957, and of the location of the Local's books, records, and property; and he also prayed for judgment in the amount of \$32,000 plus all other damages (J. A. 11-13). He had also sought a temporary restraining order and a preliminary injunction (R. 23; J. A. 14-17) but the denial of those motions is not at issue on this appeal.

The foregoing allegations of the complaint constituted the basic record before the court below at the time it entered its order of dismissal. The individual appellees had moved to dismiss, rather than

file their answers to the complaint (J. A. 32). Certain other pleadings and papers had been filed which related principally to appellant's motion for a preliminary injunction and to other matters which Judge Keech treated as moot because of his decision to dismiss the complaint. (J. A. 107). Their substance, so far as relevant to this appeal, may be summarized briefly.

(b) Other Factual Allegations of Record

The allegations of the complaint were amplified by two affidavits which appellant filed in support of his motions for a temporary restraining order and a preliminary injunction (J. A. 17ff, 66ff.). They showed that appellant had been designated as Acting International Secretary-Treasurer on March 8, 1957, to fill the vacancy created by the suspension on that date of Curtis Sims as International Secretary-Treasurer (J. A. 17, 66); that on November 14, 1957, the General Executive Board had resolved to call a Special Convention of the International and that the Convention call, issued December 17, 1957, set the Convention for March 3, 1958 (J. A. 66, 67, 70-75);³ that on December 17, 1957, appellant had been duly designated as Special Trustee of Local 118 and that same day appellees had been notified of this appointment (J. A. 18, 23); that on December 20, 1957, appellant had made telegraphic demand upon appellees to vacate their officerships in the local and turn over the local's assets to appellant, as provided by the Constitution (J. A. 23, 28-9; see also Const., Art. XX, Sec. 4, App. C, p. 48), but the demand had been refused; that various banks which were depositaries of Local 118's funds had notified appellant of the withdrawal of those funds (J. A. 23); that on December 21, 1957, appellees had proceeded with the disaffiliation-secession meeting previously called, at which meeting some 700 out of 1100 members of Local 118 were reported as having been present and having voted to disaffiliate in accordance with resolution

³ The Convention was held as scheduled. New elections for International offices were held; the Constitution was amended; and other phases of International business were deliberated and acted upon. See Appendix B, *infra*.

forms and procedural suggestions previously sent to appellees as part of the conspiracy (J. A. 21, 22, 24-28); that since that time appellees had claimed that Local 118 was affiliated with the ABC and was the true and lawful successor of Local 118 as an affiliate of the International (J. A. 22); that a hearing had been noticed and held as required by Art. XX, Sec. 4(b) of the Constitution (App. C, p. 48) to determine whether appellant's Special Trusteeship should continue (J. A. 69); and that none of the appellees had appeared at that hearing, at which a continuance of the trusteeship was recommended (Ibid). The answers of various bank appellees furnished facts to confirm the withdrawal and transfer by appellees of certain Local 118 funds (J. A. 29-32, 62-65).

Appellees, in opposition to appellant's motion for a preliminary injunction, (not in support of their motion to dismiss; compare J. A. 32 and R. 104-5, 107), filed an "Affidavit of Charles B. McClosky" (J. A. 33ff). Appellant moved to strike this affidavit, excepting certain parts (J. A. 102, 103), after having taken appellee McClosky's deposition concerning matters set forth in his affidavit (J. A. 80-102). That motion to strike was among the matters finally treated as moot by Judge Keech. The portions of McClosky's affidavit excepted from appellant's motion to strike principally related to the December 21, 1957 "disaffiliation-secession" meeting of Local 118 members. It was alleged that the special meeting had been duly called and noticed (J. A. 40, 41); that some 700 out of 1100 local members had attended and the vote by those present to disaffiliate was unanimous (J. A. 41, 43); that McClosky could not personally imagine that any member of Local 118 would have voted against that action (J. A. 43); that appellant had given appellees notice of the hearing on the continuance of his trusteeship on December 20, 1957, three days after his original designation as Special Trustee (J. A. 48); that appellees had notified the International's President that they had no intention of attending the hearing in any event (J. A. 49, 50); and finally that appellee McClosky had notified bakery and confectionery employers in the area that Local 118 had disaffiliated from the Inter-

national but nonetheless expected the employers to abide by their contracts with it (J. A. 51).

Two further matters should be mentioned. Appellant in his supplemental affidavit had listed nine alleged members of Local 118, "among others" who had communicated to him their desire to protect their contract rights and benefits and Local 118's funds and property (J. A. 69). Appellees filed an affidavit by appellee Hellwig, to which were attached other affidavits in identical form by five of these members stating that they had signed loyalty cards addressed to appellant "not knowing that he represented a corrupt organization that we had withdrawn from on December 21, 1957" (J. A. 104ff; R. 300ff). At the same time, appellees countered appellant's motion to strike specified portions of the McClosky affidavit by cross-moving to strike all of appellant's two affidavits. Consideration of both motions was deferred by Judge Keech until after consideration of the motion to dismiss. At the time of granting the latter motion, he declared that all other matters, including the motions to strike were moot (J. A. 107).

(c) The Proceedings Below

Because of the foregoing, appellant believes that virtually the only record properly before the District Court at the time it granted appellees' motion to dismiss consisted of the complaint itself and that motion. Other facts were so thoroughly disputed or else redundant that they could not have formed a basis for adjudication. The motion to dismiss cited two general grounds for dismissal, which were amplified by a supporting memorandum of law (R. 91-103). It is necessary to refer to that memorandum both to show what was actually before Judge Keech at the time of his ruling and also to supply conceivable reasons for that ruling, since neither his 'postcard' memorandum (J. A. 106, 107) nor his order of dismissal (J. A. 107) did more than cryptically recite ultimate conclusions of law.

The grounds for dismissal asserted by appellees were: the failure to join indispensable parties; and the failure to state a claim upon which relief could be granted, in that appellant lacked standing to sue either as Special Trustee of Local 118 or as Acting International Secretary-Treasurer, that he sought to interfere with rights guaranteed by federal law (not cited by Judge Keech), and that he sought to have the court intervene in a "labor dispute" contrary to the provisions of the Taft Hartley and Norris-LaGuardia Acts, 29 U.S.C. 151 et seq. and 29 U.S.C. 101 et seq., respectively. It must be emphasized that appellees did not rely on "unclean hands" in their motion to dismiss, but raised that issue only in their opposition to appellant's motion for a preliminary injunction, and that the issue was therefore neither briefed nor argued to the court below in connection with the motion to dismiss. At the time of the oral hearing on the motion to dismiss, held February 24, 1958, Judge Keech stated that he would defer consideration of all other matters until after he had decided the motion to dismiss. The next day by postcard he notified the clerk and the parties of his decision-- we quote the substantive text of the clerk's card in full (J. A. 107):

"Argued 2/25/58 Motion to dismiss of individual defendants. (Other motions to dismiss submitted on P&A)

"Court's action 2/24/58 - motion to dismiss, of individual defendants GRANTED; (1) Plaintiff without standing to sue; (2) failure to join indispensable parties; (3) failure to state claim upon which relief can be granted (a) labor dispute, and (b) 'unclean hands'. All other motions filed herein, as result thereof, become moot."

This decision was never amplified, either by memorandum or by the order of dismissal entered February 27, 1958 (J. A. 107), from which this appeal was taken.

RULES INVOLVED

There are no statutes involved in this action. The contract sued upon, the 1956 Constitution of the International, is attached to this brief as Appendix C (inside back cover). It would otherwise appear in the Joint Appendix at page 14. The following portions of the Federal Rules of Civil Procedure are also involved: Rules 8(a), (e), and (f); 12(b); 19(a) and (b); 20(a); 21; 23(a); and 56(c) and (e). The texts of those rules are set forth in Appendix A to this brief.

STATEMENT OF POINTS

I. None of the reasons cited by the court below was a proper ground for dismissal of the complaint:

1. The court below erred in dismissing the complaint on the ground that "complainant comes with unclean hands":

A. The issue was not even properly before the court at the time of its ruling.

B. Further, there was no basis in the record for such a ruling.

C. In any event "unclean hands" could not have been a valid defense to appellant's suit.

2. The court below erred in dismissing the complaint on the ground appellant lacked standing to sue:

A. The complaint and the International Constitution attached to the complaint showed on their face that appellant was authorized to bring this suit both as Special Trustee of Local 118 and, secondarily, as Acting International Secretary-Treasurer.

B. Any defense to appellant's suit as Special Trustee would have presented an issue of fact which should have been raised by the filing of responsive pleadings, not affidavits, and could have been decided only after a trial on the disputed issues of fact.

C. The Federal Rules of Civil Procedure permit alternative, or inconsistent, claims such as appellant asserted here in his two capacities.

3. The court below erred in dismissing the complaint on the grounds that indispensable parties were lacking:

A. No such defect was shown on the record before the court below.

B. In any event the absence of such parties would not have been a proper ground of dismissal unless they were beyond the reach of the trial court's process, or unless all the relief sought by appellant was affected by the absence of such parties. Neither exception applied here.

C. The trial court did not even specify the missing parties it felt were indispensable, and this was also error.

4. The court below erred in dismissing the complaint on the ground that "a labor dispute is involved."

A. The trial court never amplified or explained this ruling; there is no basis for ascertaining what the ruling means.

B. The ruling could only have affected a small and separable part of the claim and prayer set forth in the complaint at best. It could never be grounds for dismissal of the entire action in any case.

C. Neither the Taft Hartley Act nor the Norris-LaGuardia Act prevents maintenance of this suit.

II. Because of the foregoing errors and its consistent disregard of elemental procedural principles, the decision of the court below constituted a denial to appellant of due process of law.

- III. The decision of the court below should be reversed and the case remanded for trial on the merits in accordance with the Federal Rules of Civil Procedure.

SUMMARY OF ARGUMENT

I. While this case began as a suit to recover union property misappropriated by the individual appellees who were formerly members of the union and therefore bound by its Constitution, the issues before this Court on appeal are almost entirely procedural in nature. That is so because the trial judge, in his "postcard" memorandum granting the appellees' motion to dismiss the complaint, violated or disregarded virtually every procedural principle governing the disposition of such motions. Basic among the principles which he violated was the rule requiring him to treat the factual allegations of the complaint as well as all reasonable inferences favorable to appellant flowing therefrom as true for purposes of deciding the motion. Callaway v. Hamilton Natl. Bank, 90 U.S. App. D.C. 228, 194 F.2d 556. In any event, dismissal of the complaint was forbidden unless the record revealed that there was no dispute concerning any material issue of fact and unless it was shown to a certainty that appellant would not be entitled to relief under any state of facts which he might prove in support of his claim for relief.

The flagrant disregard of these and other procedural rules discussed hereafter rendered the decision of the trial court (Keech, J.) completely invalid and requires reversal of that decision.

II. At the outset there is the incredible fact that Judge Keech undertook to decide adversely to appellant an issue which was not even properly before him for decision, namely, the issue of "unclean hands." Appellees had not even cited "unclean hands" as a ground for dismissal but merely as a bar to granting of a preliminary injunction. Consideration of the latter motion was deferred by Judge Keech and it was ultimately treated as moot. Therefore appellant never had an opportunity to brief or argue the unclean hands issue as a possible ground of

dismissal. The only matter in the record conceivably relating to the issue was contained in an affidavit which appellant had previously moved to strike. That motion was also deferred by Judge Keech and he ultimately treated it as moot in view of his motion to dismiss. If he had intended to rely upon the affidavit, such procedure would have put the cart before the horse. Moreover, the affidavit itself, insofar as it was conceivably relevant to the "unclean hands" issue, was not worthy of any reliance and should have been stricken from the record. Finally, "unclean hands" never was and never could be a valid defense to this action--it bears no relationship to the claim asserted by appellant or to the conduct of appellant and of the union members on whose behalf he sued, and the entire doctrine is in any event inapplicable to the purely legal relief sought by appellant.

III. Nor does appellant lack standing to sue in his two capacities as Special Trustee of Local 118 and as Acting International Secretary-Treasurer, as Judge Keech ruled he did. Primarily appellant sues as Special Trustee for the local and his complaint shows on its face that he was duly appointed to that position pursuant to Article XX, Section 4 of the International Constitution. Any question concerning the continued existence of that local would necessarily have involved disputed issues of fact which Judge Keech was in no position to decide on the basis of the record before him; appellees had not even filed responsive pleadings disputing appellants' allegation that the local was in fact in existence. The complaint itself fully satisfied the requirements of Rules 8 and 9(a) F. R. C. P., in this and other respects.

Secondarily, appellant sues as Acting International Secretary-Treasurer pursuant to Article XIV, Section 8 of the International Constitution; under that provision all property of any local which has in fact dissolved or seceded reverts to the International Union in any event. Of course, Rule 8, F. R. C. P., permits such alternative pleading. Further, the quibbling objections to this alternative claim which appellees asserted in the court below were without merit. They objected to the use of the

adjective "Acting" before appellant's title, but that usage, which was dictated by the circumstances of appellant's original appointment to the office, could not affect the validity of his appointment under Article IV, Section 6 of the Constitution. Appellees further argued that appellant was required to delegate his power to sue for recovery of the misappropriated property, but Article XIV, Section 8 of the Constitution merely states that he "may" delegate the power if he chooses not to exercise it personally.

IV. In ruling that there was also an absence of indispensable parties, Judge Keech failed to specify which parties those were. That failure was plain error since, as this Court held in Green v. Brophy, 71 App.D.C.299, 110 F.2d 539, the absence of indispensable parties is not fatal so long as those parties can be reached by the process of the trial court. That case also shows that none of the absent parties suggested by appellees was in fact indispensable:

Local 118 and its loyal members are fully and effectively represented by appellant as Special Trustee of the local. He positively asserts the continued existence of the local and there is no showing in the record that his trusteeship is hostile to the interests of its loyal members. Similarly, the fact that appellees claim they represent a new rival local known as "Local 118, ABC," does not make that local an indispensable party. The only source for this claim was an affidavit by one of the appellees, which affidavit appellant had previously moved to strike. The complaint was the only pleading of record before Judge Keech and it alleged that appellees had converted the misappropriated property to their own uses. However, assuming that appellees regarded themselves as custodians of the property for members of "Local 118, ABC", they did not suggest that they were unable to represent those members adequately. If they felt any such inadequacy, the burden was upon them to show it on the record and to implead that organization or its members.

Finally, appellees suggested that certain employers of the present and former members of Local 118 must be joined as parties because the complaint also seeks relief concerning checked-off dues. However, appellant does not seek any relief against the employers as such, but merely to enjoin appellees, as interlopers, from interfering with normal dues check-offs under Local 118's existing contracts.

V. Lastly, Judge Keech declared as a further ground for dismissal "that a labor dispute is involved." He never amplified this incredibly fragmentary ruling and even appellees never seriously suggested that this defense could affect more than a small part of the relief sought by appellant. In any event, the ruling was error. This suit concerns rights in property and nothing more -- property which the appellees took in flagrant breach of a contract under which they were parties. The fact that the property was owned by a union does not deprive the courts of jurisdiction over a suit for its recovery. The Norris-LaGuardia Act and the Taft-Hartley Act are concerned only with matters of collective bargaining and terms of employment. They do not pose any bar to this action, and indeed the National Labor Relations Board has no authority to grant redress upon such a claim as is asserted here. Accordingly this holding had no greater merit than the rest of the trial court's ruling.

ARGUMENT

I. INTRODUCTION

A. The Theory Upon Which Appellant Brought Suit

Appellant based this suit upon the provisions of the 1956 Constitution of the International. That such constitutions are binding contracts between the international union, its subordinate affiliates or locals, and its individual members is a universally accepted rule of law in this country. As a corollary it is equally well established that rights in union property and also the right of all or part of a local to secede or dissolve are governed by the terms of that contract.⁴

⁴ There may also be extrinsic defenses to a suit to enforce the contract, e. g., termination of the contract or "frustration" of its terms. Such defenses are not
(Footnote continued on page 16)

Many of the cases applying these rules are collected in the annotation at 23 A. L. R. 2d 1209, 1214-1215.

However, the Court below never reached these questions in view of its decision to dismiss the complaint. That decision cannot be sustained on any of the grounds cited for it. It went squarely contrary to well established procedural principles under the Federal Rules of Civil Procedure. It would be well at the outset, therefore, to summarize certain of those principles for they, and not the substantive law of trade unions or voluntary associations, constitute the subject matter of this appeal.

B. What Was Properly Before the District Court and
What Ought to Have Guided Its Decision

We have previously summarized the state of the record before Judge Keech and particularly the allegations of the complaint. The only questions before him were those raised by appellees' motion to dismiss the complaint. That was true not only as a matter of general orderly procedure, but also because he explicitly so limited the issues at the commencement of the oral hearing on that motion, stating that if he granted that motion all other matters would become moot. Counsel heard him and agreed -- on the assumption that the issues were thus limited. Any other assumption would have been inconceivable, for the record otherwise consisted principally of disputed affidavits subject to pending motions to strike them;^{4a} the latter motions were not

(Footnote 4 cont'd. from preceding page) at issue in this appeal, because appellees did not cite them as grounds for dismissal and Judge Keech did not refer to them. Nor is there any question of the right of individual members to disaffiliate or abandon their membership -- appellant has not disputed that right. The subject matter of this action is the property of Local 118 and the International, and nothing more.

4a There were also a number of answers and other motions to dismiss or for summary judgment, filed by the bank appellees. They are not at issue here either, because Judge Keech treated them as mooted by his order of dismissal.

only not moot, but indeed took precedence, if the court intended to consider those affidavits.

For two basic reasons, therefore, the provision in Rule 12(b), F. R. C. P., permitting the trial court to go beyond the pleadings and treat the motion as one for summary judgment, has little or no relevance to this case: First, because the court gave no notice of its intention to adopt that procedure, and "the emphasis in summary judgment practice has been, and must continue to be, on actual notice." Sardo v. McGrath, 90 U.S.App. D.C. 195, 198, 196 F.2d 20, 23. See also Callaway v. Hamilton National Bank, 90 U.S. App.D.C. 228, 231, 195 F.2d 536, 539.⁵ Secondly, because Rule 56(c) itself plainly forbids summary judgment where material facts are either lacking in the record or in dispute, and there were many such facts.⁶

Therefore, Judge Keech properly had before him only a motion to dismiss for such defects as appeared on the face of the complaint, and in deciding that motion he was bound by the "usual rule" that,

"... on a motion to dismiss, the plaintiff's allegations are to be taken as true and all reasonable favorable inferences are to be indulged. Dioguardi v. Durning. A motion to dismiss should not be sustained 'unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which would be proved in support of the claim' set forth by the plaintiff. Davis v. Village of Tonka Bay, 8 Cir. 151 F.2d 411, 412. See also Dollar v. Land, 81 U.S.App. D.C. 28, 154 F.2d 307, affirmed 330 U.S. 731, 67 S. Ct. 1009, 91 L. Ed. 1209."

⁵ "The final clause of Rule 12(b) reinforces the policy that each party shall be clearly advised of the procedures being followed and the scope and nature of the issues to be resolved, and shall be accorded full opportunity to present his case."

⁶ Appellees themselves, in their memorandum of points and authorities opposing appellant's motion for preliminary injunction, argued that "this case presents issues of fact and of law, of substantial complexity and controversy. *** In view of the numerous and complicated issues of fact and law, the Court should not award relief until after trial and after witnesses had been heard ***. An injunction pendente lite should not issue where the parties are in serious dispute on conflicting questions of fact." (R. 110)

Callaway v. Hamilton Nat. Bank, 90 U.S. App. D.C. 228, 231, 195 F. 2d 556, 559.

Inherent in that rule is the principle that the motion should not be granted if it appears that only a part of the claim or of the relief sought is barred. Callaway, itself, was such a case.

These precepts are basic. We would not dwell upon them at all did not the decision of Judge Keech plainly and repeatedly disregard them. They have particular relevance to his ruling on the question of "unclean hands", a ruling which itself points to the arbitrariness of his entire decision.

II.

"UNCLEAN HANDS" COULD NOT HAVE BEEN A VALID
GROUND OF DISMISSAL. IT WAS NOT EVEN PROPERLY
BEFORE THE COURT BELOW.

A. In holding that "complainant comes with unclean hands" (J.A. 107), Judge Keech not only went far beyond the allegations of the complaint as the only pleading before him, but also beyond the stated grounds of appellees' motion to dismiss the complaint.⁷ For that reason alone the question of "unclean hands" was neither briefed nor argued to the court in connection with the motion to dismiss and was therefore not ripe for decision.

The inescapable conclusion, however incredible, is that Judge Keech, acting on his own and without notice to, or hearing from, any of the parties, decided a question which no one believed he was considering and which in law, logic, and propriety was not before him for consideration. By this action Judge Keech denied appellant even the

⁷ This defense was cited in opposition to plaintiff's motion for a preliminary injunction and it was in that connection that the disputed McClosky affidavit was filed. (R. 104 ff.) But the trial court never even reached that motion, which, in any event, was subject to far different standards of decision.

minimal procedural fairness. His action reflected a degree of pre-judgment and arbitrariness incompatible with due process of law.

B. There was in fact no basis in the record for Judge Keech's holding. The McClosky affidavit was then subject to a motion to strike (J.A. 102-3), which the court had not yet considered. Moreover, McClosky's deposition plainly showed that much of his affidavit was not made on personal knowledge⁸ and therefore could not, under Rule 56(e), F.R.C.P., serve as a basis for summary judgment. Further, the affidavit was already contradicted by the complaint and by appellant's own affidavits and, had appellant believed it properly at issue, he would have taken issue with virtually every assertion which McClosky made. Certainly, neither the truth nor the relevance of the extreme claims of appellee McClosky was conceded.

C. In truth, had the issue been properly considered by the court below, appellant's motion to strike McClosky's affidavit should have been granted. The major portion of the affidavit was intemperate in tone, irrelevant in content, and unverifiable by the affiant -- in short, of no value in judicial proceedings. We do not labor these points, because the court below did not even purport to consider them. McClosky's own deposition substantiates them, however. See J.A. 80-102.

D. For the same reason we do no more than point out that the entire doctrine of unclean hands was inapposite to this case. The claim of "unclean hands" which appellees asserted in another connection was not related to either appellant or the union members who were his principals; it was no defense to an action based on appellees' misappropriation of Local 118's funds (see, e.g., Keystone Driller Co. v. General Excavator Co., 290 U. S. 240, 245); and it could never have been a defense, even if relevant, to the purely legal relief sought by appellant in the form of damages for breach of contract (J.A. 13). These matters are not ripe for decision

⁸ It was for this reason, as well as the gross irrelevance and scandalous nature of much of its contents, that appellant had moved to strike the major portions of the affidavit.

here, of course; but because they demonstrate the arbitrariness of Judge Keech's ruling in the state of matters before him, they point up the necessity in the interest of justice and due process of law, of reversing the decision below.

III.

APPELLANT HAS STANDING TO BRING THIS SUIT

Judge Keech's postcard-size memorandum (J. A. 106-7) stated "plaintiff without standing to sue". Here, as with his other grounds of decision, this fragmentary "statement" was never amplified. For meaning, therefore, we look to the grounds asserted by appellees in support of their motion to dismiss. Recognizing that appellant sued in two distinct capacities, they sought to defeat his standing in both respects. However, both they and Judge Keech misconstrued the posture of the case and the rules governing motions under Rule 12(b), F. R. C. P.

A. Appellant's Standing As Special Trustee of Local 118 Was Not Open to Attack

1. Appellees argued below that appellant must positively show the existence of seven loyal members of Local 118, for otherwise the local was dissolved and he had no capacity to sue as to Special Trustee. Whether such a showing must be made prior to judgment, that is, during trial, is not in issue. The question is, must there be such showing on a motion to dismiss? That appellant was required to supply such proof within the four corners of his complaint is a novel and wholly unsupported proposition. A motion to dismiss indeed assumes the existence of such proof by assuming the truth of the complaint's allegation that at least seven such members do exist.

To support their contrary position appellees cited the statement in Green v. Brophy, 71 App. D. C. 299, 305, 110 F.2d 539, 545 that "the court is not justified in basing any assumption in respect to the union's existence on plaintiff's allegations." That passage was wrenched out of

its context in Green v. Brophy and used below in a completely different set of circumstances; it cannot bolster appellees' position. The plaintiff in Green v. Brophy alleged no more than an ultimate conclusion of law, namely, the non-existence of the union, and that allegation was made squarely in the face of a reported holding by another United States District Court that the union was still in existence at the time of the disputed events. (See Green v. Gravatt (W. D. Pa.), 19 F. Supp. 87, cited in Green v. Brophy, 71 U. S. App. D. C. at 304, 110 F. 2d at 544). Moreover, the question in that case was whether plaintiff could avoid the necessity of joining indispensable parties by making such a bare conclusory allegation. Here appellant squarely alleged, not a mere conclusion of law, but the basic fact that at least seven members of Local 118 desired to retain its charter (J. A. 4). The fact that his allegation was made on information and belief - for the soundest of reasons, discussed below - could not be fatal to his right to a trial on that very question among other disputed issues of fact .

2. The issue of seven loyal members vel non was disputed and there was no basis for resolving it one way or the other on the pleadings and affidavits before the District Court; Rule 56(c) forbids such a result. The very nature of the issue and the way in which it was posed confirm the fact that Judge Keech had no conceivable basis in the record for ruling adversely to plaintiff on this standing question.

Appellees had seized all the books and records of Local 118 and its officers and funds. By their own claim, at their December 21, 1957, "secession" meeting they had secured the approval of only 700 of the Local's 1100-odd members. This was a majority, if true, but far from the all-but-6-member majority required by the International Constitution for effective dissolution of the local. (Appellees implicitly admitted that the existence of seven loyal members would establish the existence of Local 118 and also appellant's standing as Special Trustee for they pitched this portion of their motion to dismiss entirely on the ground that plaintiff had not demonstrated the existence of seven such members. (R. 97-8).

In these circumstances and with only a short time before his motion for preliminary injunction would be heard, appellant could not personally contact all of the 1100 members to ascertain their positions. He did secure, however, the authorization by nine persons to indicate on their behalf their desire to retain Local 118's charter. Appellees countered with the Hellwig affidavit, admitting that two of these nine were in fact loyal to the International, alleging that two others were not members in good standing, and that the remaining five, as stated in their own appended affidavits (in identical form), had not understood what was meant by their previous authorization to appellant. Accordingly, the most that could be said about seven of these nine was that a trial was necessary to ascertain their status and views; the Hellwig affidavit established at best that these were hotly disputed facts and that ex parte attempts to show allegiance in advance of trial were not probative of anything. No evidence had been introduced about any of the other 1090-or-so past members of Local 118, except that some 700 (unidentified) had previously taken one stand on disaffiliation. They, too, might prove fickle; and there were still 400 more not heard from.

These factual conflicts confirm the point that Judge Keech was in no position to rule on this question with finality, that it was clearly premature for him to say that five more loyal persons did not exist in Local 118's large membership. If a plaintiff is required to marshal his final proof in his complaint, then pleadings do not serve as means to frame issues for trial, but rather as a vehicle for denying litigants a trial. The salutary provisions of Rule 8(a), (e), and (f), F.R.C.P., would be set at naught. In the circumstances shown here, the result would be to reward appellees for their wrongful acts by putting them beyond any redress; their very seizure of Local 118's office, records, and funds (which they have never denied) would effectively defeat at the outset every attempt to secure judicial review of that conduct.

The Rules of Civil Procedure do not contemplate that result. Rule 8(a) requires no more than "a short and plain statement of the

claim showing that the pleader is entitled to relief"; 8(e) states that "Each averment of a pleading shall be simple, concise, and direct." These provisions do not require the pleading of evidence intended to be relied upon. Rule 8(f) provides that "All pleadings shall be so construed as to do substantial justice." That may include pleading on information and belief where the matters (such as membership records in this case) are peculiarly within the knowledge of the defendants. Carroll v. Morrison Hotel Corp., (C.A. 7), 149 F.2d 404, 406. Indeed, Rule 9(a) explicitly dispenses with the duty to allege capacity, much less proof of capacity.

Recently the provisions of Rule 8 were construed by the Supreme Court in a suit brought by negro railroad employees to secure an end to discrimination against them by the designated bargaining agent under the Railway Labor Act, 45 U.S.C. 151 et seq. Conley v. Gibson, 355 U.S. 41. It was objected that the complaint did not sufficiently specify the alleged discrimination. That allegation was not only essential to the claim for relief, but may also have been jurisdictional. (See Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210). The court unanimously rejected this argument (355 U.S. 41, 47, 48):

"The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper. The decisive answer to this is that Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues."

In other words a complaint is not to be tested as if it were a pre-trial statement or a summary of evidence. Appellant plainly alleged that the requisite seven members in good standing desired to retain the charter. No more was required; the allegation was sufficient to show appellant's standing as Special Trustee for purposes of requiring appellees to answer the complaint. It may be added that no prejudice could come to appellees if they were required to put in their proof and try out this disputed factual issue, but here, as elsewhere, they sought to avoid that normal procedure.

B. Appellant Also Had Standing To Sue as Acting International Secretary-Treasurer

In response to appellant's secondary suit as Acting International Secretary-Treasurer appellees asserted first that there was no such office provided by the International's Constitution; second, that in any event such a suit could only be maintained if Local 118 had seceded, dissolved, or had its charter revoked; and third, that Article XIV, Section 8 of the Constitution required appellant to delegate that authority to a third person rather than exercise it directly. That section provides as follows (App. C, p. 30):

"Should a local union dissolve, secede, or have its charter revoked all its money and property shall revert to the ownership of the International Union, and the International Secretary-Treasurer may authorize, in writing, a member of a nearby local or a representative to take charge of and turn same over to the International Union."

The above defenses were at best narrowly technical ones to interpose in a suit for misappropriation of union funds originally entrusted to the custody and care of appellees. But more, they are without merit and can be answered summarily:

1. The complaint alleged that appellant was duly designated as Acting Secretary-Treasurer, pursuant to Article IV, Section 6, of the Constitution, and his affidavits (J. A. 3) showed that he had been so

designated on March 8, 1957, to fill a vacancy created by the suspension of the previously elected Secretary-Treasurer. Article IV, Section 6, provides: "Where vacancies occur in International elective offices between Convention elections, a majority of the General Executive Board in session shall fill such vacancies" (App. C, p.13). Appellees have not questioned the validity of this procedure. The use of the adjective "Acting" to denote the fact that appellant originally secured his title in that manner was of no substantive importance. In fact, such designation was used because at the time appellant's predecessor was merely suspended pending charges. He might have been reinstated. See J.A. 66.⁹ Appellant's tenure as Secretary-Treasurer was fully ratified and confirmed by the International Convention held in March of 1958, at which time he was also elected to the post for the next four years. (See affidavit in Appendix B.)¹⁰

Even as a de facto officer appellant's powers and duties would have been valid and binding as to appellees. See Phillips v. Payne, 2 Otto 130; Spitzer v. Ernst, 190 Misc. 47, 72 N.Y.S. 2d 570; Steinmiller v. McKeon, 21 N.Y.S. 2d 621, aff'd 261 App.Div. 899, 26 N.Y.S. 2d 491, aff'd 288 N.Y. 508, 41 N.E. 2d 925.¹¹

2. The argument that appellant's suit as Secretary-Treasurer was inconsistent with his suit as Special Trustee is strange, to say the least, in view of Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) provides that "Relief in the alternative or of several different types may be demanded" and 8(e) (2) states that "A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses . . . A

⁹ In point of fact, appellant's predecessor did bring suit in the court below to secure reinstatement as Secretary-Treasurer, but on October 14, 1957 the District Court dismissed his complaint on the ground that he had failed to exhaust the remedies provided under the International Constitution (See Art. XX, Section 10, App. C, p.52). Sims v. Cross, et al, U.S.D.C. D.C., Civil Action No. 2453-57.

¹⁰ The fact that the convention had already been called on December 17, 1957, was brought to the attention of the court below prior to the oral hearing. See J.A. 66ff.

¹¹ Nor is it necessary to demonstrate that under Rule 23, F.R.C.P., appellant's suit would have been maintained in any event as a class action on behalf of the entire membership of the International.

party may also state as many separate claims or defenses as he has regardless of consistency . . ." Appellant's suit as Acting Secretary-Treasurer was secondary or alternative in the sense that it would come to the fore only in the event that Local 118 was determined to have seceded or dissolved.

3. Article XIV, Section 8 vests the duty of collecting the assets of such a local in the Secretary-Treasurer who "may authorize, in writing, a member of a nearby local or a representative to take charge of and turn same over to the International Union." It does not require that he do so; he may, or he may act himself, since under Article VII he is in charge of the International's finances and assets. Upon reason and the explicit language of the Constitution appellant could retain these powers, rather than delegate them, and act in his own right. He did so here.

IV.

NO INDISPENSABLE PARTIES WERE LACKING; BUT
EVEN HAD THEY BEEN, THEIR ABSENCE WOULD
NOT HAVE BEEN GROUNDS FOR DISMISSAL

In ruling that appellant's complaint should be dismissed for "failure to join indispensable parties", Judge Keech again failed to give reasons and also to specify the parties he deemed indispensable. Again it is necessary to refer to the contentions of appellees in the court below. Appellees relied heavily upon Green v. Brophy, 71 App. D. C. 299, 110 F.2d 539. We believe that that case is in fact sound authority for the conclusion that no indispensable parties were missing in this case, but in any event it squarely holds that the absence of such parties is not fatal where they can be reached by the trial court's process and impleaded. That could have been done here. In both these respects Judge Keech's ruling was error.

The parties whose presence appellees claimed was indispensable were (A) Local 118 itself; (B) members of Local 118 who might object both to appellant's trusteeship on the one hand and to the conduct of

appellees on the other hand; (C) "Local 118, ABC", the new organization allegedly created by appellees and their cohorts; and (D) employers who had contracts with Local 118 (R.95-6). We shall answer these points seriatim after having discussed the factual setting in Green v. Brophy, supra.

Green v. Brophy was a suit brought by officers of the A. F. of L. against an officer of the C. I. O., and the subject matter in dispute was the funds of a former A. F. of L. -affiliated union which had transferred its allegiance to the C. I. O. and its funds to the defendant officer of that organization. Shortly after these acts, the A. F. of L. pursuant to its Constitution declared the union's charter revoked and demanded a turn-over of all its property to plaintiff Green as A. F. of L. President, to be held in trust by him pending a reorganization of the union on a loyal basis. Such a reorganization could occur if seven members desired to retain the charter, but in his complaint the plaintiff Green affirmatively alleged the non-existence of the union as of that time. In other words, by his own allegation, Green sought to impose a trust on the funds for the members of the union in the event of its future reorganization; but since he alleged the union's non-existence his beneficiaries could not be presently identified and might never come into being.

The questions decided by this court on appeal from a dismissal of the complaint were whether the A. F. of L. union and its members¹² who had transferred allegiance to the C. I. O. were indispensable parties. The Court answered both questions affirmatively for reasons noted in the discussion below.

A.1. Here appellees first contended that Local 118 was an indispensable party because the property in question "was at one time its property" and both appellant and appellees "are asserting legal claims to that

¹² It seems that the Court merely referred to representative members since the joinder of the entire union membership would have imposed an insuperable burden.

property." (R.95). It should be said first of all that appellees made no proper claim of record, since they failed to file answers; the McClosky affidavit was hardly a substitute for a pleading. The point is more than a technicality, as we shall show below. Secondly, appellant sued primarily as Special Trustee for Local 118, pursuant to Article IX, Section 4 of the International Constitution. That section vested him with all the powers formerly possessed by the local officers and also with full responsibility for the safekeeping of the local property. In fact Section 4(c) directed that he "initiate all necessary action to recover money or other properties of the subordinate affiliate." His position was, therefore, markedly different from that of the plaintiff in Green v. Brophy who purported to sue on behalf of the union and its members at the same time that he alleged its non-existence. Indeed it was only that allegation which made suit by Green possible, for otherwise the union or its officers could have sued in their own right. "The existence of the union is inconsistent with the plaintiff's trusteeship", this Court said (71 App. D. C. at 303, 110 F.2d at 543), having previously noted that a trustee may sue for his cestuis que trusts if he fairly represents their interests (Id., 71 App. D. C. at 302, 110 F.2d at 542). Green had shown his hostility to the claimed beneficiaries by alleging the union's non-existence, and had thereby also made it impossible to identify his beneficiaries.

No such hostility of interests exists here, for the International Constitution explicitly provides for appellant's trusteeship on behalf of the local. He is the logical person to sue in its behalf precisely because of his power under the Constitution.¹³

¹³ We have previously noted that it is purely coincidence that appellant is both Special Trustee and International Secretary-Treasurer, but it should be pointed out that no conflict of interest can occur, because the second cause of action can come to the fore only in the event that the trial court declares Local 118 no longer in existence. Appellant's primary claim is that the local does exist. In this respect the requirements of Green v. Brophy, 71 App. D. C. 302-3, 110 F.2d 542-3, are also met.

Both the Supreme Court and this Court have held that the question of indispensable parties is a non-technical one the answer to which must depend upon what is consistent with equity and good conscience, (see, e.g. California v. Southern Pacific Company, 157 U.S. 229, 255; Gauss v. Kirk, 91 U.S. App.D.C. 80, 82, 198 F.2d 83, 85). It is therefore relevant to ask what would be changed if Local 118 were added. Appellant as Special Trustee is fully authorized to represent the local and is always accountable to its members if he fails in his fiduciary duty. No decision in this action can affect that duty and he does not purport to sue in any other capacity so far as relevant here (see footnote 12, below). On the other hand if Local 118 must be joined, he will be responsible for securing its legal representation and insuring that the representation is adequate. What appellees seek, then, is a meaningless form of circumlocution. Green v. Brophy does not require such an empty gesture; it is in fact authority for the conclusion that Local 118 is already fully represented here and need not be added as a party.

2. Appellees next suggested that there may be members of Local 118 who desire to retain its charter but do not desire appellant's trusteeship. The short answer is that individual appellees do not point to any such persons, and appellant does not know of any. Moreover the Constitution Article XX, Section 4(e) provides for a formal hearing if continuance of the trusteeship for longer than one year is proposed, and nothing that is decided in this case can prejudice the outcome of that hearing. Finally, Rule 19(b), F.R.C.P. makes full provision for the addition of such persons as parties if and when they appear. See Gauss v. Kirk, supra. It is sufficient to say that they have not appeared so far. To conjure up their existence now is to anticipate a dispute which does not exist and most likely will never exist. To dismiss a complaint on such a figmentary basis is to render decision on a matter which is neither a "case" nor a "controversy" within the meaning of Article III of the Constitution. Any person who sues in a representative capacity may some day lose part of his following, but absent a present showing

that dissidents do in fact exist, his suit cannot be defeated on that ground. If it could, the concept of class actions under Rule 23, F. R. C. P. would be rendered useless. Again Green v. Brophy does not support appellees, because in alleging that the union no longer existed the complaint filed in that case showed on its face an inherent conflict of interest.

3. Next appellees contend that "Local 118, ABC" the new rival union which they and their followers have formed is a necessary party because it also claims the funds in dispute. This contention went far beyond the allegations of the complaint, which merely charged that individual appellees, as part of a conspiracy among themselves and others, had purported to secure the secession of Local 118 and then had misappropriated its property and refused to return it. The allegation that the property was taken on behalf of "Local 118, ABC" is based entirely on the McClosky affidavit which, as we have said, was not even submitted in support of the motion to dismiss and moreover was disputed in its own right. We are mindful that Rule 12(b) permits the trial court to go beyond the pleadings, but it does not authorize it to accept affidavits in lieu of pleadings or to resolve disputed issues of fact raised by affidavit alone. The situation here may be seen by analogy: Suppose B, C and D steal funds belonging to A and, A having brought suit to recover the funds, B, C and D elect not to answer the complaint, but rather to file an affidavit by B saying "I and my co-defendants are really Robin Hood and his merry crew and we took these funds for the benefit of all the poor people of Nottinghamshire. You must make them parties too or else your suit fails."

First of all, such issues are properly raised by pleadings because they involve facts which contradict the plain allegations of the complaint. Secondly, since the complaint does not agree with the affidavit, the obvious remedy of individual appellees is to implead on their own motion those persons they think ought to be made parties as the beneficiaries of their wrongful conduct. That is not a duty which they can cast upon

appellant by McClosky's ipse dixit. Thirdly, since it is their own affidavit which alleges that they really represent other interested persons, the burden is upon them to show that at the same time they do not adequately represent them. Again, they cannot cast upon appellant the burden of their own felt inadequacies. In Green v. Brophy the complaint itself alleged that union officers and members who were not made parties had transferred the union's funds to defendant, a C.I.O. officer. But the complaint did not clearly specify the nature of defendant's custody of the funds. It therefore showed on its face a deficiency of parties defendant. An inescapable conflict of interest was also posed there because one defense to the action might have been the allegation that the A. F. of L's. revocation of the charter was invalid, and no one could have reasonably expected Brophy (seeking the union's affiliation with the C.I.O.) to make that defense. (See 71 App. D.C. at 304, 110 F.2d at 544.)

Here, if what McClosky says is true, there is no such conflict and the nature of appellees' custody of the disputed property is clear. Those are questions which can only be determined by a trial, since the complaint does not proceed on that theory. Moreover, appellees' ability as officers of "Local 118, ABC" to represent the membership of that organization is not challenged by the complaint, because the complaint simply accuses them of personal misconduct in breach of the International Constitution. If appellees themselves claim to represent others and at the same time doubt their ability to do so adequately, they may seek to implead those others in accordance with Rules 20(a) and 21, F. R. C. P.

4. Finally, appellees contended that since the complaint seeks to enjoin the collection by appellees of dues checked-off under collective bargaining contracts between Local 118 and various employers, these employers are also indispensable parties. This contention went to only a relatively small part of the relief sought by appellant, but it also lacked merit. Appellant sought no relief against the employers themselves, but merely to enjoin appellees from interfering with Local 118's

contractual rights with the employers. The granting of the relief sought against appellees as interlopers could not adversely affect the employers' rights nor could it leave the matter open to future litigation. See Green v. Brophy, 71 App.D.C. at 301-2, 110 F.2d at 541-2 quoting California v. Southern Pacific Co., 157 U.S. 229, 255; see also "Developments in the Law: Multiparty Litigation in the Federal Courts", 71 Harv.L.Rev. 874, 879-885 (March 1958). The employers are at best mere custodians or stakeholders of the checked-off dues and such persons are not indispensable parties. See e.g., Salem Trust Co. v. Manufacturers Finance Co., 264 U.S. 182, 190; Bacon v. Rives, 106 U.S. 99, 104; Stock Yards Bank v. National Surety Corp., (W.D.Ky.) 42 F.Supp.10, 11.

B. Therefore, none of the persons suggested by appellees was an indispensable party within the meaning of Rule 19, F.R.C.P. But even were that not true, the absence of such persons was not ground for dismissal. Green v. Brophy, itself, 71 App.D.C. at 305, 110 F.2d at 545 states that, "leave should be given the complainant to amend his bill joining indispensable parties".

Judge Keech did not inquire into this possibility; he did not give appellant leave to follow such a procedure; indeed, he did not even indicate those parties whose absence he deemed fatal. His failure in all these respects was error which merely emphasizes the arbitrariness of his decision.

V.

THE DISTRICT COURT HAD JURISDICTION OF THE
SUBJECT MATTER; NEITHER THE TAFT-HARTLEY
ACT NOR THE NORRIS-LA GUARDIA ACT WAS A BAR
TO SUIT

A. Finally appellees argued and the court below ruled that the complaint failed to state a claim upon which relief could be granted because "a labor dispute is involved". While elsewhere we have sought to amplify Judge Keech's decision by reference to the arguments of appellees below, that device is of little help in the case of this particular

holding, because appellees themselves were vague to the point of meaninglessness. One thing is clear, however: At best this was another contention which explicitly went to only a small portion of the relief sought by the complaint, namely, paragraphs 2(d) and (f). (J. A. 12 ; see R. 101-103 for appellees' contentions.)

B. Appellees contended that the complaint sought to have the District Court declare that Local 118 remains indefinitely the bargaining agent of its former members. They claimed that this conclusion was "evident from a general reading of the Complaint as a whole" (R. 101), and also that it was "specifically reflected" (R. 101) in paragraphs 2(d) and (f) of the prayer. Now, of course, the complaint sought no such thing but merely the enforcement of rights flowing directly from the International Constitution as a binding contract.

Paragraph 2(d) of the prayer sought to enjoin appellees from willfully representing that Local 118 was no longer an affiliate of the International (J. A. 12). This portion of the prayer, therefore, sought to enjoin appellees from wrongful misrepresentation and from misappropriation of Local 118's name -- traditional remedies for common law trademark infringement and unfair competition. See American Gold Star Mothers, Inc. v. National Gold Star Mothers, Inc., 89 U.S. App. D. C. 269, 191 F.2d 488, 27 A. L. R. 2d 948; 4 Am. Jur., pp. 478-79, "Associations and Clubs" secs. 36, 37. It had nothing to do with the determination of proper bargaining agents. Local 118 would still have a right to the integrity of its name and affiliation even if it were not the designated bargaining agent in a single plant.

Prayer 2(f) sought to enjoin appellees from collecting and receiving membership dues owing to Local 118 either directly or under contract check-off provisions (J. A. 12). Local 118's right to these dues was founded on contract, and only recently this Court had occasion to notice that the National Labor Relations Board itself has held that it "is not the proper forum for parties seeking to remedy an alleged breach

of contract or to obtain specific performance of its terms". United Telephone Company of the West, 112 N. L. R. B. 779, 782 quoted at slip opinion, p. 6, International Union, United Mine Workers of America v. National Labor Relations Board, _____ U. S. App. D. C. _____, _____ F. 2d _____ (No. 13974, decided June 12, 1958). Certainly too the N. L. R. B. is not the exclusive or even the proper forum for remedying third party tortious interference with such contractual rights. See section 8(b) (1) of the Taft-Hartley Act, 29 U. S. C. 158 (b)(1) and section 301, 29 U. S. C. 185. See also International Association of Machinists v. Gonzales, 356 U. S. _____, 2 L. Ed. 2d 1018, 26 Law Week 4355 (May 26, 1958); United Automobile, etc. Workers of America v. Russell, 356 U. S. _____, 2 L. Ed. 2d 1030, 26 Law Week 4347 (May 26, 1958).

C. Appellees also vaguely suggested that, "There are implications in the complaint that defendants (appellees) have interfered with the freedom of individual employees" (R. 102) and such allegations fall within the exclusive jurisdiction of the National Labor Relations Board. The charge itself was wholly unfounded; this suit concerns property rights and only property rights. Moreover the general implication that only the Labor Board is empowered to protect the freedom of workers is no more true than the notion that only the Interstate Commerce Commission can insure the operation of the railroads. It seems evident that the crucial question, if one were actually presented, would not be what inferences appellees choose to draw from the complaint, but what relief the District Court is free to grant without infringing the Labor Board's exclusive jurisdiction. Appellees did not point to any portion of the complaint to buttress their contention and we do not think Judge Keech could have accepted such a vague and misconceived contention.

D. Finally, appellees contended that the complaint sought injunctive relief in violation of the Norris-La Guardia Act, 29 U. S. C. 101 ff. The complaint sought nothing but the protection of established property rights which happened to be owned by a union and its members.

The Norris-La Guardia Act has no application to such a suit. The argument is without the least merit and is fully answered by the well-reasoned opinions in Fitzgerald v. Abramson (S. D. N. Y.) 89 F. Supp. 504, 509, and Fitzgerald v. Dillon, (E. D. N. Y.) 92 F. Supp. 681, 683. See also Columbia River Packers Association, Inc. v. Hinton, 315 U. S. 143.

CONCLUSION

The order of the court below dismissing the complaint cannot be sustained on any ground. It should be reversed and the case remanded with instructions to the District Court to proceed to trial in accordance with the Federal Rules of Civil Procedure.

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APPENDIX A

PROVISIONS OF THE FEDERAL RULES OF
CIVIL PROCEDURE INVOLVED

Rule 8(a), (e), and (f):

GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

* * * *

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9(a):

PLEADING SPECIAL MATTERS

(a) Capacity: It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

Rule 12(b):

DEFENSES AND OBJECTIONS--WHEN AND HOW
PRESENTED--BY PLEADINGS OR MOTION--MOTION
FOR JUDGMENT ON PLEADINGS

* * * *

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can

be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 19(a) and (b):

NECESSARY JOINDER OF PARTIES

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) Effect of Failure to Join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

Rule 20(a):

PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All

persons may be joined in one action as defendants if there is asserted against them, jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 21:

MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 23(a):

CLASS ACTIONS

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

Rule 56(c) and (e):

SUMMARY JUDGMENT

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(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

APPENDIX B

District of Columbia, ss:

I, PETER H. OLSON, being sworn upon my oath, state that I am the appellant in this case and also that I am the Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America, whose property and affairs are at issue in this case and in whose behalf I brought this suit in the United States District Court for the District of Columbia. In that capacity I am charged with the transcription and custody of minutes and records of all proceedings, meetings and conventions of that union and of its General Executive Board. I previously executed the verified complaint herein, printed at pages 1-14 of the Joint Appendix, the affidavit printed at pages 17-24 of the Joint Appendix, and the supplemental affidavit printed at pages 66-80 of the Joint Appendix.

The last-mentioned affidavit refers to and incorporates a Call of a Special Convention of the aforesaid International union. That Call was issued on December 17, 1957, pursuant to a resolution passed by the union's General Executive Board on November 12, 1957. In accordance with the Call, the Special Convention was duly held in Cincinnati, Ohio, on March 3 to 5, 1958, that is, after the filing of the notice of appeal in this case. Among the business duly transacted at that Convention was the amendment in certain respects of the 1956 Constitution of the international union, the election of new International officers for a period of four years, as provided in that Constitution, and the passage of certain other resolutions. As a result of the election of new officers I was duly elected to the office of International Secretary-Treasurer for a term of four years. Moreover, on March 5, 1958, the Convention by a voice vote, without opposition, approved the following resolution:

"RESOLVED: That this Convention go on record as approving and ratifying the action of the General Executive Board on March 8, 1957, to name Peter H. Olson as Acting International Secretary-Treasurer, and that his performance of the constitutional duties of International Secretary-Treasurer be approved and ratified by this Convention."

The official transcript of proceedings of the Special Convention fully and accurately reflect the foregoing events of which I also have personal knowledge by virtue of my attendance at all sessions of that Convention.

/s/ Peter H. Olson
Peter H. Olson
International Secretary-Treasurer of the
Bakery and Confectionery Workers'
International Union of America

Subscribed and sworn to before me this 10th day of July, 1958.

[SEAL]

/s/ Mildred M. Boyd
Notary Public, D. C.

My commission expires June 30, 1961.

BEST COPY AVAILABLE

from the original bound volume



CONSTITUTION

OF THE

Bakery and Confectionery Workers' International Union of America

AND

RULES FOR LOCAL UNIONS AND COUNCILS UNDER ITS JURISDICTION



**Organized January 13 to 16, 1886
at Pittsburgh, Pennsylvania**

Affiliated with the A. F. of L. since February 23, 1887

Affiliated with the AFL-CIO since December 5, 1955

*Amended, Revised and Approved by the Twenty-Fifth
Constitutional Conference of the
Workers' International Union of America*

Held in San Francisco, California, October 24, 1955

Declaration of Principles

The Bakery and Confectionery Workers' International Union of America was organized in 1886 as one of the pioneers of the labor movement. Faithful to the principles and objectives of its Founders, our Union has overcome and survived the active resistance of hostile employers to grow steadily in numbers, strength and achievement. We hold firm to our belief in the basic rights of self-organization, collective bargaining and united action for the improvement of working conditions. We believe in a free enterprise system which protects the rights of workers and the community to a fair participation in the fruits of a prosperous economy. We acknowledge unqualified loyalty to our form of government and its institutions. Our responsibility as a chosen leader of working men and women impels vigilant challenge of all threats against their rights as citizens through anti-social and anti-labor legislation. We will, as a labor organization, always follow a progressive, constructive course to the end that our members, our industry and our country will benefit and prosper.

Constitution

PREAMBLE

We, the workers engaged in the baking, confectionery and kindred industries, in order to improve our conditions, protect our interests and establish and maintain a plan of collective bargaining with employers, do enact this Constitution.

ARTICLE I

Name, Object and Government

Name

Section 1. The name of this organization shall be **BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA.**

Object

Sec. 2. The aim of the International Union shall be to promote the economic and social welfare of all workers in the baking, confectionery and kindred industries by (1) effective organizational action; (2) progressive improvement in living standards through the reduction of hours of labor, increased wages, decent working conditions, effective job security, establishment and expansion of retirement and welfare benefits, and the elimination of the hazards of unemployment and automation; (3) aid in securing and retaining employment; (4) promotion of the interests of labor unions generally and the Bakery and Confectionery Workers' International Union in particular through continued effort in the State and Federal legislatures; (5) alliance with other labor

organizations in matters of common concern toward the end of mutual protection and organization.

Government

Sec. 3. The structure and authority of organization of the International Union shall be as follows, and in the order listed:

- (1) The Convention
- (2) The General Executive Board
- (3) Local Unions.

ARTICLE II

Jurisdiction, Label and Seals

Jurisdiction

Sec. 1. The Bakery and Confectionery Workers' International Union of America shall exercise and maintain jurisdiction over all workers employed in the manufacture, production, shipping and in-plant movement of (1) all bakery products such as but not limited to bread, rolls, cake, pies, biscuits, crackers, pretzels, pastries and matzos; (2) confectionery products such as but not limited to ice cream, candies, candied fruits, preserves and sweets of every description; (3) all macaroni and paste products; (4) kindred products; (5) any and all food products and (6) any and all ingredients from which the foregoing products are made.

International Union Label

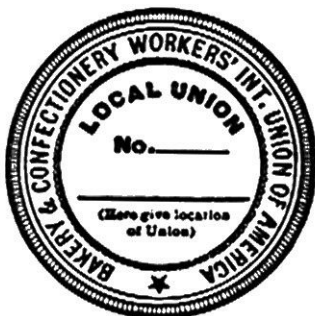
Sec. 2. There is hereby adopted for the purpose of designating, distinguishing and advertising the product of the labor of the members of the Bakery and Confectionery Workers' International Union of America, a label in such sizes, design and dimension as the General Executive Board shall fix and determine.



(Facsimile)

International and Local Union Seals

Sec. 3. Seals, of which the following are facsimiles and whose size may be varied, are hereby adopted as the seals of the International Union, and of local unions respectively:



Control of Labels, Seals and Other Insignia

Sec. 4. The General Executive Board shall be the governing body and exercise supreme control over all labels, seals and other insignia of this International Union. It shall have the right to assign, from time to time, any International officer to act on its behalf. The right to retake and repossess such labels, seals and insignia shall be vested in the General Executive Board. The General Executive Board may, from time to time, change the provisions, terms and conditions of all agreements relating to the use, printing and issuance of labels, seals and other insignia. All subordinate affiliates shall be subject to the orders of the General Executive Board, or its designated International officer, respecting the use, printing and issuance of labels, seals or other insignia.

ARTICLE III

Conventions

Time and Place

Sec. 1. The regular Convention shall be held every five years and shall commence in such month as shall be designated by the President with the approval of the General Executive Board, at such place as has been designated by the preceding Convention, if practicable. The General Executive Board shall designate the day on which the Convention shall convene. In the fourth month next prior to each Convention, the International Secretary-Treasurer shall issue a Convention call to all local unions. The Convention shall not extend beyond ten days of sessions, except by two-thirds vote of the duly accredited delegates.

Powers of Convention

Sec. 2. All the sovereign power, including the legislative, executive, administrative and judicial, of the Bakery and Confectionery Workers' International Union of America shall be vested in its Convention when in session.

Composition of the Convention

Sec. 3. The Convention shall be composed of the International Officers and the duly elected and qualified delegates from local unions.

Basis of Representation and Vote

Sec. 4. Local unions which have been organized under the jurisdiction of the International Union six (6) months previous to the Convention shall be entitled to representation. Local unions with a monthly average International per capita tax and dues paying good standing membership of

less than 101 shall be entitled to one (1) delegate;
from 101 to 200 to two (2) delegates;
from 201 to 600 to three (3) delegates;
from 601 to 1,000 to four (4) delegates;
from 1,001 to 1,400 to five (5) delegates;
from 1,401 to 1,800 to six (6) delegates;
from 1,801 to 2,200 to seven (7) delegates;
from 2,201 to 2,600 to eight (8) delegates;
from 2,601 to 3,000 to nine (9) delegates;
over 3,001 to ten (10) delegates;

but in no case shall a local union be entitled to more than ten (10) delegates. Any two or three locals having less than one hundred members each located within an area of 250 miles may combine in the selection of a delegate. No other local unions may combine in the selection of a delegate and no delegates shall represent more than three such local unions.

The number of members of a union shall be the average monthly per capita tax that it has paid to the

International Union on its dues paying membership for the twelve months inclusive of the month of May previous to the convention, as certified by the International Secretary-Treasurer to the Credentials Committee.

Delegates representing up to twenty-five members shall be entitled to one vote, and to one additional vote for each additional twenty-five members they represent. The number of votes of those unions which are represented by more than one delegate shall be equally divided among their delegates.

Qualifications of Delegates from Local Unions

Sec. 5. Every delegate to the convention must (1) be a citizen of the United States or Canada; (2) be provided with properly attested credentials from the local union he represents; (3) be a member of the local union he represents for at least sixty days prior to the date of his election as delegate; (4) be a continuously good standing, dues-paying member of the International Union for at least two continuous years next prior to the date of his election, and must have worked at least two years as a wage earner in any branch of the trades under the jurisdiction of the International Union; (5) at the time of his election, be able to show such number of Union Labels on his person as the General Executive Board may require.

Exempted from the wage earning provisions shall be members of the International Union who have been recognized and seated at previous Conventions.

Also exempted from the requirements of (4) above shall be delegates whose local unions have not been in existence for two years, provided that the continuously good standing dues-paying membership and wage earning periods of such delegates are not less than six months. Also exempted are delegates who were re-admitted into any local union by deposit of retiring cards, provided such delegates are qualified under the

dues-paying, continuously good standing and wage-earning provisions of this section for the required period before they received retiring cards.

Credentials of Delegates from Local Unions

Sec. 6. At least thirty days prior to the opening of the Convention, duplicates of credentials on blanks furnished by the International Secretary-Treasurer shall be forwarded by the authorized local union officers to the International Secretary-Treasurer.

Delegates to the Convention shall present the original credentials bearing the seal of the local union and signature of the authorized officers of their respective locals to the Committee on Credentials. Protests against delegates must be in written affidavit form, stating the specific grounds for protest and signed and sworn to by the party objecting to the seating of the delegate. These affidavits must be submitted to the International Secretary-Treasurer at least ten days prior to the convening of the Convention and to the Committee on Credentials upon convening prior to the Convention.

Expenses of Delegates from Local Unions

Sec. 7. Expenses of \$15.00 per day shall be paid each delegate for each day in attendance at the Convention and the cost of first class transportation of delegates from their home city to the Convention city and return by direct route, shall be paid by the International Union; provided, however, that such delegates remain in attendance upon the Convention commencing with its first day's session until its adjournment.

Transportation and expenses of protested delegates shall be withheld until such delegates have been seated as accredited.

Attendance of International Officers

Sec. 8. The International Officers shall attend and represent the International Union at the Convention. They shall render a comprehensive report to the Convention.

International Officers, by virtue of their office, shall be seated at the Convention with delegates' rights and one vote each. They shall not be allowed to represent any local unions.

Compensation and expenses shall be allowed International Officers for attendance at the Convention.

Committees

Sec. 9. A committee of three shall be appointed by the International President from the duly elected delegates to the Convention and reported to the General Executive Board. This committee shall constitute the Standing Committee on Credentials, Auditing, Rules and Order of Business, and Committee on Committees. It shall convene five days prior to the Convention at the site thereof, and shall be designated the Standing Committee.

It shall be the function of this committee to prepare and submit to the Convention for its approval:

- (1) A report on all action taken on credentials.
- (2) Agenda and rules of conduct for the Convention.
- (3) A report on the financial condition of the International Union after an examination of the report of the International Officers and the statement of the regular certified public accountant of the International Union.
- (4) A list of delegates to serve on the fixed convention committees.

Convention Resolutions

Sec. 10. All resolutions by local unions to be submitted to the Convention must be at International Headquarters at least thirty days prior to the opening of the Convention. Such resolutions must be submitted in triplicate and signed by all delegates-elect. Resolutions by the General Executive Board may be introduced at the Convention, provided such resolutions have the approval of a majority of the General Executive Board. All other resolutions may only be introduced with the approval of a two-thirds vote of the Convention.

Parliamentary Rules

Sec. 11. All questions of Parliamentary Law not resolved by this Constitution shall be decided according to the Parliamentary rules adopted by the convention in session. Until a convention has adopted its parliamentary rules, those rules adopted by the preceding convention shall apply.

ARTICLE IV

International Officers

Titles and Terms of Office

Sec. 1. The officers of the International Union shall be the International President, International Secretary-Treasurer, and the International Vice-Presidents. All the International Officers shall together constitute the General Executive Board. They shall take their offices immediately on election and shall continue therein until their successors have been elected and qualified.

Qualifications for Office

Sec. 2. Any member of the International Union in good standing, and who has been properly nominated, may qualify for any International Office if he meets each of the following qualifications:

(1) He must be a citizen of the United States or Canada.

(2) He must have been a good standing, dues paying member in the International Union for at least two continuous years next prior to the date of his nomination.

(3) He must have worked for at least two years as a wage earner in any branch of the trade under the jurisdiction of the International Union.

Nominations

Sec. 3. Nominations for all International Officers shall be made at large from the floor on the third day of the Convention. The entire list of candidates for all International elective offices shall be completed prior to voting on any one International office. No person shall be a candidate for more than one International office.

Elections

Sec. 4. Election of International Officers shall be held immediately following nominations. Voting for the office of International President shall be held first and shall be followed by voting for the office of International Secretary-Treasurer. Thereafter, voting for the offices of International Vice-Presidents shall be held.

(a) If there shall be two or more candidates for each of the offices of International President and International Secretary-Treasurer, voting shall be by roll-call of the delegates, each casting as many votes

for each office as authorized by Article III, Section 4. The candidates receiving the largest number of votes cast on the roll-call shall be deemed elected. In the event there is a tie vote for any office, there shall be a run-off between the two candidates receiving the largest number of votes.

(b) Voting for all vacant offices of International Vice-President shall be held jointly. Each delegate shall cast the total number of votes authorized by Article III, Section 4 for each of such offices as may be vacant, but such voting shall not be cumulative. The candidates receiving the largest number of votes for the vacant offices of International Vice President to be filled, shall be deemed elected. In the event there is a tie vote among candidates that would affect the election of one to the last available vacant office of International Vice President, there shall be a run-off election among such tied candidates. The candidate receiving the largest number of votes in the run-off shall be deemed elected.

Salaries and Compensation of International Officers

Sec. 5. The annual salary and expenses of the International President and the International Secretary-Treasurer and the compensation and expenses of each International Vice-President for the next five years shall be fixed and determined by the General Executive Board following the adjournment of the Convention.

Vacancies in International Offices

Sec. 6. Where vacancies occur in International elective offices between Convention elections, a majority of the General Executive Board in session shall fill such vacancies. Should a vacancy occur in the office of the International President, a special meeting of the General Executive Board to fill the vacancy shall be convened within thirty (30) days on written notice by the International Secretary-Treasurer.

Retirement

Sec. 7. It shall be mandatory for all International Officers, representatives and employees, whether appointed or elected, to retire at age sixty-five, except as the General Executive Board may provide on recommendation of the International President.

ARTICLE V

Structure, Powers and Duties of the General Executive Board

Structure

Sec. 1. The General Executive Board shall consist of the International Officers.

Powers and Duties of General Executive Board

Sec. 2. All the powers of the General Convention when in session shall, when the same is not in session, pass to and vest in the General Executive Board with the exception of the powers to amend the Constitution and except such other powers as may herein be specifically delegated to the various officers and subordinate bodies of the International Union, and shall serve as the final appellate body in the case of all appeals by local union officers and members. Specifically, but not in limitation of its powers and duties:

(a) The General Executive Board must hold regular semi-annual meetings in each year, and may convene at other times in special session upon the call of the President.

(b) The General Executive Board is authorized to make and adopt such provisions and rules as are consistent with this Constitution, the declaration of principles and the decisions and rulings of the Conventions, as may become necessary for the best interests of the

organization during the intervals between conventions, and for the proper and correct transaction of all International Union business.

(c) The General Executive Board shall interpret the Constitution and laws of the International Union and shall decide all questions of jurisdiction and laws subject to appeal to the Convention, and shall have full power to grant charters, to appropriate money and to levy assessments.

(d) The General Executive Board is authorized to submit questions and propositions to the membership for referendum vote at any time, in accordance with the provisions of this Constitution.

(e) The General Executive Board shall have the power to loan or donate money to local unions in case of urgent necessity, but such loan or donation shall not exceed the amount of \$500.00 at any one time.

(f) It shall be the duty of the General Executive Board to engage certified public accountants to examine the International financial accounts periodically and to make written reports thereof.

(g) The General Executive Board shall have original trial and appellate jurisdiction as set forth in this Constitution.

(h) When not in session, the General Executive Board may act in all matters of any nature requiring board action by telegram, letter or long distance telephone. Whenever the International President desires action by the General Executive Board, he may contact the members of the Board by telegraphing, writing or telephoning to them and the members may take action on the matter brought to their attention in the same manner. Such action so taken by the members of the General Executive Board shall constitute action of the Board as though it were in formal session, but it shall

be reviewed at the next meeting and shall be a part of the minutes. When in session a majority of the General Executive Board shall constitute a quorum and official action may be taken by those present.

(h) The General Executive Board shall have the power to enter into agreements with other labor organizations for their absorption by or merger with the Bakery and Confectionery Workers' International Union of America. It shall have authority to enter into such terms as may be necessary to effectuate such action, including, but not limited to, the appointment of additional International Vice-Presidents. Notwithstanding any other provision of the International Constitution, International Vice-Presidents may be designated by the General Executive Board and shall serve thereon in the interim between Convention elections. In no case shall the appointment of additional Vice-Presidents, in pursuance of this Section, cause the total number of Vice-Presidents to exceed twenty.

(i) The General Executive Board at the request of the International President shall have the power to call and make provision for special conventions.

(k) The General Executive Board is empowered to constitute and make rules for separate Divisions or Regional Conferences covering areas and kinds of manufacture and production under the jurisdiction of the Bakery and Confectionery Workers' International Union of America.

(l) The General Executive Board is empowered to make rules and regulations and otherwise to supervise the acts and conduct of local unions, officers, and members thereof, with respect to health, welfare, pension and supplementary unemployment insurance plans to which local unions are or may become parties under and by virtue of collective bargaining agreements.

ARTICLE VI

Powers and Duties of the International President

General Powers and Duties

Sec. 1. The International President shall act as the presiding officer of the General Executive Board and the Convention.

He shall, between meetings of the General Executive Board, by whose decision he shall abide, have general charge of all the International Union's business affairs and office. He shall have the authority to select and remove representatives for part or full-time services as local, special, area or general representatives, who shall function within the geographical territory and in the manner prescribed by him, and he shall fix the compensation of such representatives. He shall also engage and fix compensation for such assistants, business staff, and expert help as are required to carry on the work of the International Union.

Financial Duties and Powers

Sec. 2. The International President shall prescribe, publish and distribute to all subordinate bodies such rules and regulations pertaining to applications for membership and pertaining to payment of all International benefits as will insure reasonable protection to the fund for such benefits, and he shall also prescribe, publish and cause to be distributed such forms as will insure a uniform and methodical conduct of the business pertaining thereto. He shall render annually to the General Executive Board at a regular session, an accounting of receipts and

expenses, which shall be prepared by the International Secretary-Treasurer under his supervision and of the general financial standing of the International Union. As soon after the end of each semi-annual period as is practicable, he shall send to each local union a printed summary report of all the financial transactions of the International Union during such period. He shall countersign all checks of the International Union or delegate this function where necessary, so that his signature may be affixed to checks either by machine, facsimile signature or otherwise. Person delegated with the function of signing checks on behalf of the International President shall be bonded in the same amount as the International President. The International President shall furnish a fidelity bond in an amount fixed by the General Executive Board but not less than \$25,000.00. He shall deliver to his successor in office all properties of the International Union in his custody and control before his Bond shall be released.

Audit Powers

Sec. 3. The International President shall have full power to demand for audit all books and accounts and to investigate the affairs of any affiliated subordinate body. Financial officers of subordinate bodies are required to surrender all books, statements, records and properties to the authorized representative of the International President for the purpose of examination and report.

Investigative Powers

Sec. 4. Local union officers are required to appear before the International President or his designee and shall be obliged to provide any information in respect to local union books and accounts, collected bargaining contracts and other activities, etc.

ARTICLE VII

Powers and Duties of the International Secretary-Treasurer

The International Secretary-Treasurer shall act as recording secretary of the General Executive Board and the Convention.

He shall furnish local unions with the dues and assessment stamps to which they may be entitled, as well as labels, dues books, constitutions of the International Union, charters, and all blanks necessary for the transaction of business with headquarters and for which they have submitted a written order accompanied by payment. He shall receive and acknowledge all financial remittances to the International Union. He shall prescribe, publish and distribute to subordinate bodies such rules and regulations as he may deem necessary for their accounting procedures.

He shall keep a correct account of all financial transactions conducted through him between local unions and the International Union. He shall prepare all financial reports required by this Constitution or called for by the International President. He shall at the direction of the International President prepare and sign all checks of the International Union and submit them for countersignature by the International President. In the absence of the International Secretary-Treasurer, the function of preparing and signing checks shall be assumed by a Vice President designated by the International President approved by the General Executive Board, and who shall be bonded

in the same amount and manner as is the International Secretary-Treasurer. He shall at no time have more than \$500.00 cash of the International funds in his possession, except as otherwise provided in this Constitution. He shall deposit all other money in the name of the International Union in banks approved by the International President. He shall make payments of routine expenses, and strike benefits. He shall perform all other duties prescribed by this Constitution or assigned by the International President. He shall abide by the decisions of the General Executive Board, and shall furnish fidelity bond in the amount fixed by the General Executive Board but not less than \$25,000.00. He shall deliver to his successor in office all properties of the International Union before his bond shall be released.

ARTICLE VIII

International Representatives

International Representatives shall be appointed as prescribed by Article VI, Section 1, and be subject to the supervision of the International President under general policies established by the General Executive Board. They shall have such functions, duties and powers as shall be assigned to them by the International President and shall report to him weekly.

The International President, when he deems it for the best interests of the International Union, is empowered to remove any International Representative who, in his judgment, is not satisfactorily performing the duties assigned to him.

All subordinate bodies are required to admit International Representatives to all meetings including collective bargaining conferences.

ARTICLE IX

Delegates to the Conventions of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

Delegates to the conventions of the AFL-CIO shall include the International President, International Secretary-Treasurer, and such other delegates as shall be appointed by the International President with the approval of the General Executive Board.

The delegates shall represent the International Union at those Conventions and at such other Conventions as may be designated by the General Executive Board. They shall attend all such Conventions, present such resolutions or proposals as are ordered to be presented by the Convention of this International Union or by the General Executive Board, and shall vote as a unit in accordance with the decisions of the General Executive Board. The delegates herein provided for shall be allowed their approved expenses.

ARTICLE X

International Referendum

Any local Union in good standing may initiate a special referendum vote on any proposed amendment to this Constitution or upon any subject or question affecting the interests of the International Union. Such proposal shall first be recorded with the General Executive Board before being submitted by the proposing Local Union to other local unions for support or endorsement. If within 45 days from the date of such recording, the proposal is endorsed by at least one-third of all local unions in good standing, a referendum must be ordered immediately by the General Executive Board and the vote taken and

completed within 60 days thereafter. The first 30 of the 60 days shall be set aside for free discussion of the proposal in the Bakers' and Confectioners' Journal, and 30 days for voting on the proposal under consideration; sample ballots must be published in the Bakers' and Confectioners' Journal where feasible, and official ballots sent out no later than 30 days prior to the time when the election must be completed. In extraordinary cases the General Executive Board may dispense with the discussion, but in such cases a detailed explanation must be forwarded with all ballots. The voting, canvass and verification, etc. shall be conducted under rules adopted by the General Executive Board designed to assure a fair and honest vote.

The General Executive Board by a majority vote may initiate a referendum vote on any proposed amendment to this Constitution or upon any question or subject affecting the interests of the International Union under such rules and regulations for the conduct of the referendum as will assure a fair and honest vote.

ARTICLE XI

Official Journal

The Bakers' and Confectioners' Journal shall be the official organ and property of the International Union. It shall be edited by the International President with complete impartiality and shall reflect, uphold and advance the policies, principles and programs of the International Union. The International President shall act as the official custodian of The Bakers' and Confectioners' Journal and shall be responsible for the management thereof to the General Executive Board. A copy of The Bakers' and Confectioners' Journal shall be furnished to each member of each local under regu-

lations prescribed by the General Executive Board, and the General Executive Board shall determine the conditions upon which such publication may be supplied to the general public.

ARTICLE XII

Income of International Union

Per Capita Payment

Sec. 1. Local unions, shall forward to the International Secretary-Treasurer from each month's dues collected from their members, one dollar and twenty-five cents (\$1.25) per month, per member. Such per capita payments shall be forwarded to the International Secretary-Treasurer immediately together with the corresponding duplicate pages of the financial Day Book. Upon receipt of such remittance, the International Secretary-Treasurer shall forward to the remitter dues stamps equivalent to the number of dues stamps disposed of by the collection of dues as shown upon such Day Book pages. The International Secretary-Treasurer shall not be required to accept or acknowledge any duplicate pages of financial Day Books unless such pages are accompanied by a remittance covering the total per capita payment to the International Union for dues collected. Local unions, shall be provided by the International Union, with sufficient dues stamps in anticipation of their first and initial collection of dues from their members.

Distribution of Per Capita Payment

Sec. 2. The International per capita payment and all other income derived by the International Union shall be applied for the general objectives of the International Union and all costs and expenses related thereto, and shall be disbursed as provided for in this Constitution. The International President is em-

powered to effect the investment of surplus funds of the International Union subject to the approval of the General Executive Board.

From each per capita payment shall be apportioned 15 cents for the Strike Fund, 2 cents for the Convention Fund, and the remainder for the General Fund.

Registration Fees and Their Distribution

Sec. 3. Local unions shall forward to the International Secretary-Treasurer a registration fee of \$4.00 for every new member. Upon receipt of such registration fee (together with the corresponding membership application showing all the required information), the new member's membership dues book shall be issued by the International Secretary-Treasurer.

Charter Fees

Sec. 4. Twenty Dollars must accompany the application for a charter, which sum shall entitle the new local to charter, seal, suitable rubber stamp and pad, necessary account books, stationery and report blanks and copies of the Constitution. The charter fee shall be credited to the General Fund.

Other Income

Sec. 5. Income derived from other sources, shall be credited to the General Fund.

Borrowing

Sec. 6. The General Executive Board may borrow on behalf of the International Union such funds as may be required from time to time to carry on the work of the International Union and on such terms as the General Executive Board may find necessary and proper.

Disbursements of Strike and Convention Funds

Sec. 7. Disbursements for strike benefits and convention expenses shall be made only from the respective funds established for these purposes. In the event that those funds are insufficient to meet current needs at any time, due to the emergency nature of the need for these funds, they may be supplemented by loans from other funds. These funds shall be replenished and all emergency loans to these funds shall be repaid by special assessments, where authorized by the General Executive Board.

ARTICLE XIII

Strikes

Strike Fund

Sec. 1. There shall be a strike fund which shall be drawn upon in order to sustain members in cases of authorized strikes and to pay constitutional obligations in any strike approved or ordered by the General Executive Board. The International President may, subject to the approval of the General Executive Board, apply the strike fund wherever he deems it necessary for the defense and protection of the International Union and its members.

Strike Action By Local Unions

Sec. 2. When any difficulty arises between any Local Union and an Employer, it shall be the duty of the Local Union to do everything possible directed toward the peaceful settlement of the difficulty prior to resorting to strike action. Any union official or member participating in any manner in an unauthorized or 'wildcat' strike or work stoppage shall be subject to disciplinary action by the International Union.

If a peaceful settlement cannot be reached, approval of three-fourths of the members under such rules and regulations as the International President may deem necessary, shall be required for strike declaration.

In the event a strike is declared, the members involved shall be subject to the strike rules of their local union, and to the direction of the General Executive Board.

If in pursuance or violation of any provisions of this Section after due notice the Local Union follows a course of action detrimental to the interests of its members or of the International, the General Executive Board may intervene and if deemed necessary, may declare an emergency requiring trusteeship of the local.

Payment of Strike Benefits by International Union

Sec. 3. In the event of a strike which is authorized or approved by the General Executive Board, the International President may apply the moneys of the strike funds of the International Union as he may deem it necessary either in the form of strike benefits or otherwise. Strike benefits shall be at the rate of \$20.00 per week for a maximum of ten weeks to be paid to all striking members not otherwise employed with not less than six months good standing membership. Payment of strike benefits when made shall not commence before the first week of the strike. No strike benefits may be authorized by the International President unless the local union involved shall have first received strike permission from the General Executive Board. The General Executive Board shall establish and publish rules and conditions on the conduct of strikes, the submission of claims for strike benefits, the strike responsibilities and reports of local unions and international representatives.

Duration of International Strike Sanction

Sec. 4. International strike sanction for any one situation shall be valid for a period of thirty days. Upon application to the General Executive Board, such sanction may be renewed for successive periods of thirty days each not to exceed a total maximum of ninety days.

ARTICLE XIV

Local Unions

Formation and Jurisdiction

Section 1. Eleven or more persons who are engaged in work under the jurisdiction of the International Union may form a local union by securing a charter from the General Executive Board and pledging to abide by the Constitution. Local unions shall bear the title and shall have such jurisdiction as decided and defined by the International Union.

Local Initiation Fees

Sec. 2. New local unions shall have the right to initiate members for less than the regular initiation fee for the first 30 days after the charter has been issued, but in no event shall a candidate be admitted for less than the amount of the International registration fee. Thereafter, the charter must be closed and the local initiation fee shall not be less than \$5.00 for every new member. An initiation fee in excess of \$25.00 shall be subject to approval by the General Executive Board.

Meetings of Local Unions

Sec. 3. Every local union shall hold a general meeting in the first half of the months of January and July, at which meetings the officers shall render their reports.

No local union shall hold less than one meeting in each month, and it shall be left to the local union to decide whether the meetings shall be executive or not.

Local Dues

Sec. 4. Members shall pay to local unions monthly dues of not less than two dollars and fifty cents (\$2.50). Exceptions thereto may only be granted upon application to and by the General Executive Board. Local Unions shall have the right to levy local assessments.

Local unions collecting dues, etc., from members of other unions must, subject to disciplinary action, return the money to those unions to whom such payments belong.

Members residing in a place where no local union exists must pay their dues to the local union nearest to their place of employment or residence.

Local By-Laws

Sec. 5. Every local union shall adopt By-laws. Such By-laws must be in accord with the Constitution of the International Union and must be submitted to the International President for approval. A copy of the local's By-laws must be filed in the International Office.

Membership and Financial Trustees', and Periodical Statistical Reports

Sec. 6. Local unions, through their financial secretaries, must send to the International Secretary-Treasurer their monthly membership and financial reports promptly after the last meeting of, or the close of, each month. Quarterly trustees' reports shall be due for each quarterly period at such time as may be fixed by the General Executive Board. Periodic statistical reports shall be submitted to the International Union at such times as shall be fixed by the General Executive Board.

Delinquency and Suspension of Local Unions

Sec. 7. Local unions delinquent for two consecutive months in the submission of monthly membership reports, financial reports or in the payment of assessments or per capita payment due to the International Union shall stand suspended. Should the delinquency extend for a total period of six months, the International Secretary-Treasurer may, with the approval of the International President, upon two weeks prior notice to the local union, take appropriate action, including revocation and cancellation of their charter.

Local unions who do not file quarterly trustees' and/or other required reports within one month after they are due shall stand delinquent. If not filed within two months from the due date, such local union shall stand suspended. If not filed within six months, the charters of such local unions shall, upon two weeks' previous notice by the International Secretary-Treasurer, stand revoked and cancelled.

Payments of all International benefits to any local union who stands delinquent in accordance with the provisions of this section shall be deferred. Notice of delinquency shall be given to the local union by the International Secretary-Treasurer and shall also be published in The Bakers' and Confectioners' Journal.

No International benefits shall be payable to any local unions or their members for the period of their suspension in accordance with the provisions of this section.

Property of Local Unions

Sec. 8. All funds and property of the local union shall be held by it in the name of the local union to be used only for the purpose of effectuating the objectives of this Constitution and in accordance with its provisions.

Should a local union dissolve, secede, or have its charter revoked all its money and property shall revert to the ownership of the International Union, and the International Secretary-Treasurer may authorize, in writing, a member of a nearby local or a representative to take charge of and turn some over to the International Union. The General Executive Board may prosecute any officer or member of any such local union who shall refuse to deliver to such authorized member or representative any of the said funds and/or property.

If the defunct local is reorganized within one year then the funds and property taken over by the International Union shall become the funds and property of the reorganized local, except that any expenses to the International Union connected with the recovery of the funds and property or with the reorganization of the defunct local shall be charged against such funds and property.

Officers of Local Unions and Oath of Office

Sec. 2. Each local union shall elect the following officers: *insofar as they, whenever practicable, they may combine two offices in one person*:

A President or Chairman, Vice President, Recording Secretary, Corresponding Secretary, Financial Secretary, Treasurer, Sergeant-at-Arms, a minimum of three Trustees, a Local Executive Board which shall include the President and such other officers as the local may desire and such other local representatives and delegates as required by the Constitution and laws of the International or which the local union deems necessary.

Upon being installed, each local officer shall take the following oath:

.....
I, *my name*, do hereby swear or affirm, that I will, to the best of my ability, perform the duties of the office to which I have been elected.

I furthermore promise . . . that I will always advance the sale of Union Label goods . . . and that I will patronize only those establishments . . . that display Union cards and Union service buttons.

That I will carefully preserve and guard . . . all Union property that may be left in my charge; . . . and that upon the expiration of my term of office, . . . I will turn over such property . . . to my duly elected and installed successor.

Qualifications to Hold Local Office

Sec. 10. Any member of the International Union may be elected to any offices in a local union provided he meets the following requirements:

(a) He must be a citizen of the United States or Canada. (The permanent officers of the local union shall constitute a permanent committee to assist any members who have not yet done so to complete their citizenship.)

(b) In local unions established more than two years, he must be a continuously, good standing, dues paying member of the International Union and/or the local union for at least two continuous years next prior to nomination and election.

(c) In local unions organized less than two years, he must be a member in continuous good standing for at least half the period of time that the local union was chartered by the International Union.

Terms of Office

Sec. 11. Local unions shall have the right to fix the terms of their officers except that the financial officers requiring fidelity bonding shall be elected for not less than an annual term commencing with February 1st. Regular elections shall take place at the general meetings. All officers shall remain in office until their suc-

cessors have qualified and been installed. If any financial office becomes vacant for any reason, the accounts of the vacating officers shall at once be examined by the trustees or auditors, who shall render a report of their findings to the local union and to the International Union. Their successors shall not have or assume any responsibility for accounting for the period preceding their installation.

Fidelity Bonds

Sec. 12. All officers who in any way handle money of local unions shall at the local's expense furnish a fidelity bond from such company and in such amount as the General Executive Board may determine and approve. Applications for such bond must be made through the International Secretary-Treasurer. Failure to pay premium cost promptly may require additional service charge.

Duties and Powers of Local Executive Board

Sec. 13. The Executive Board shall meet when necessary during the intervals between regular meetings, and shall have full and complete charge of all business of the union demanding immediate action. They shall submit their actions to the next regular meeting of the local for approval.

Duties and Powers of Local President

Sec. 14. The President shall preside at all meetings of the local, preserve order, and enforce its laws. He shall decide all parliamentary questions and usage, appoint, or cause to be elected, required committees and see that the International Constitution is maintained and observed. He shall have the deciding vote whenever the vote of the local shall be equally divided on any question.

Duties and Powers of Vice-President

Sec. 15. The Vice-President shall assist the President in the discharge of his office, fill his place in his absence, and have such other duties as are customarily incident to his office.

Duties and Powers of Recording Secretary

Sec. 16. The Recording Secretary shall keep correct minutes of all local meetings which he shall read at the beginning of each meeting; keep a correct list of all standing and special committees, with notes of their functions and when they are to report; keep all letters, dispatches and documents in his possession and read them when so ordered by the President; keep the roll of officers, and read their names when ordered by the President; mark the absentees; handle the local's correspondence if there is no corresponding secretary; send reports of general interest to The Bakers' and Confectioners' Journal for publication and be the custodian of the seal of the union.

Duties and Powers of Corresponding Secretary

Sec. 17. The Corresponding Secretary shall receive all communications and dispose of the same. It shall be his duty, immediately after the election of officers, to forward to the International Secretary-Treasurer the names and addresses of all elected officers. He shall perform all other duties prescribed by this Constitution. In case no corresponding secretary is elected, these duties shall be performed by the Recording Secretary.

Duties and Powers of Financial Secretary

Sec. 18. The Financial Secretary shall receive all money income of the local union; he shall keep a correct account of all receipts and disbursements of the funds of the local union and all other funds in which the local union participates; he shall maintain

a record of each member's dues, in a manner to permit rendering a clear report thereon at meetings whenever called upon to do so; he shall submit orders of disbursements to the local treasurer as directed by the local union (such orders shall be signed by the President); he shall turn over all money collected at local union meetings to the local treasurer at the close of each meeting, obtaining a receipt therefor; he shall deduct the amount due in per capita payment to the International Union from such collections and shall make a prompt remittance of the amount of such per capita payment to the International Secretary-Treasurer, accompanied by the appropriate duplicate day book record; he must, after the last meeting of each month, submit to the International Secretary-Treasurer a complete report of all receipts and expenses of the local union and of all other funds in which the local union participates and a record of membership in the local union on blanks supplied by the International Office, keeping a copy of said report in the files of the local union; he shall give notice of delinquency in writing to delinquent members or post suitable notices of delinquency at their places of employment at least 24 hours before they may be expelled for delinquency in dues or assessments, pursuant to Article XVII, Section 6(c) of this Constitution; he shall make a report of the names of expelled members to the International Secretary-Treasurer; he shall keep a correct list of the names and addresses of members in his local union; he shall keep a correct account of all receipts and disbursements of strike costs, a report of which shall be made by him to the International Office at least every two weeks during the strike period, and shall perform all other duties prescribed by this Constitution.

Duties and Powers of Local Treasurer

Sec. 19. The local Treasurer shall receive all money collected by the Financial Secretary, give receipt therefor and keep a correct account of the same. He shall,

with his order therefor, remit to the International Office all moneys for the payment of labels and supplies and all assessments due to the International Office. He shall pay out no moneys other than those above stated unless the same is ordered to be paid by his local union. He shall be responsible, jointly with the trustees, for the proper custody of all bonds and other securities and shall arrange for facilities whereby such bonds or securities may be released from custody for sale, exchange or audit purposes only through orders signed by himself, the President and Recording Secretary and bearing the seal of the local union. He shall at no time keep more than twenty-five dollars (\$25.00) cash of the local funds in his possession unless otherwise directed by the local union and not expressly disapproved by the International Secretary-Treasurer; all money in excess of that sum shall be deposited to the credit and in the name of the local union in a bank designated for that purpose by the union. He shall perform all other duties prescribed by this Constitution.

Duties of Trustees

Sec. 20. The Trustees of a local shall arrange for proper banking facilities. They shall audit the books and accounts of the local financial officers at least once every three months covering quarterly periods designated by the General Executive Board, for which purpose they shall obtain proper bank statements. The Trustees or Auditors shall furnish the International Secretary-Treasurer with reports showing the condition for each period at times prescribed by him on blanks supplied for that purpose, which reports shall be submitted and read at the local union meeting. Where local unions engage the services of public accountants, copy of their report must be furnished to the International Office. The chairman of the Board of Trustees shall be responsible to the local union and to the International Union for the proper functioning of the Trustees in each case. The names and addresses of the Trustees must be furnished to the International Office.

Duties of Sergeant-at-Arms

Sec. 21. The Sergeant-at-Arms shall assist the President in keeping order and shall permit no one to enter local meetings except members and such persons as may be granted permission by the union.

Dissolution and Merger of Local Unions

Sec. 22. No local can dissolve while seven members remain in good standing and desire to retain the charter.

Two or more locals may merge subject to the approval and direction of the General Executive Board.

Factory or Shop Unit Local Unions

Sec. 23. (a) Charters may be issued to Factory or Shop Unit locals whose members are principally engaged in machine production operations, which charters shall not be subject to the preceding sections of this Article.

(b) Each of such local unions shall function under the rules and regulations of the General Executive Board.

(c) Subject to the authority of the General Executive Board, each of such local unions shall be governed by its Executive Board which shall transact all business and exercise all powers otherwise vested in and exercised by local union membership meetings. Action of such local union Executive Board shall have the same force and effect as if taken by a general membership meeting of the local union.

ARTICLE XV

Councils

Local unions may form area joint boards, state or interstate or provincial organizations wherever practicable. Whenever such an organization is formed and the majority of the locals in that area are affiliated it shall become the duty of the General Executive Board to recognize the formal existence of such organizations. It shall not be compulsory for local unions to affiliate with such organizations. Area joint boards, state, or interstate or provincial organizations shall be organized only to assist in authorized strikes, organizing campaigns, legislative activity, union label promotion, and public relations activity. By-laws and rules adopted by such councils shall be consistent with the International Constitution, and shall be submitted to the International President for approval.

ARTICLE XVI

Appeals for Financial Aid, Etc., From Subordinate Bodies

No subordinate affiliate of the International Union shall issue an appeal for financial aid from another subordinate affiliate, or offer tickets of any character for sale, or request contributions for any purpose from another subordinate affiliate, unless it has first secured the approval and consent of the General Executive Board. Such appeal, etc., shall, at the expense of the appellant, be mailed through the general office of the International Union and notice thereof may be published in *The Bakers' and Confectioners' Journal*.

ARTICLE XVII

Membership

Eligibility

Sec. 1. Any person of good character shall be eligible for membership in the International Union provided he fulfills each of the following qualifications:

(1) Is or has declared his intention of becoming a citizen of the United States or Canada, and

(2) Is employed in an industry under the trade and geographical jurisdiction of the International Union.

Candidates must join the local union having jurisdiction over them. Where the number of bakery and confectionery workers in any locality is insufficient to form a local union, they must belong to the nearest local union, in which their dues and assessments then become payable, and with membership rights and privileges the same as the other members of that local union.

Subversive Elements Barred

Sec. 2. No member or person shall be eligible for service in any capacity for the International Union or any of its local unions who participate in the proceedings of any meeting or in any organization or activity connected or sympathetic with, related to, dominated by or under the control of any foreign organizations, group or Government generally recognized as being hostile to the American trades union movement as recognized by our International Union or to the Government of the United States or Canada, or who supports or holds membership in any such organization or group.

Members' Duties

Sec. 3. Membership in the International Union constitutes an acceptance by each member to be bound by the provisions of the Constitution, the oath of membership and the laws, policies and directives of the International Union and the local unions. It is the duty and obligation of every member to report to the General Executive Board every infringement of the Constitution by any subordinate body or member or officer thereof.

Membership Oath

Sec. 4. After having successfully met the application requirements and been accepted to membership, candidates shall be required to assume the following obligation, which they shall repeat when read to them by the presiding officer at the meeting in which they are initiated:

I, ... solemnly promise . . . to maintain the Constitution of the International Union . . . and the By-Laws of this or any other Local Union . . . with which I may become affiliated . . . as they are now constituted or may later be changed.

I promise to maintain the dignity of this organization . . . and to further its objectives.

I furthermore promise that I will not join . . . or render aid or comfort to any organization . . . hostile to the Bakery and Confectionery Workers' . . . International Union of America . . . and that I will keep secret the proceedings of this Union.

I also promise that I will, whenever possible, . . . purchase only Union Label goods . . . and that I will patronize only those establishments . . . that display Union cards and Union service buttons . . . and that I will aid and assist in bringing to justice . . . any member violating this obligation.

Dues Obligations of Members

Sec. 5. Dues shall be paid commencing with the month in which initiation takes place. Failure to appear for initiation at a meeting of the local union to which application has been made within four weeks after presentation of application for membership shall disqualify the applicant, in which case his deposit money shall not be returned.

Dues and assessments for each calendar month must be paid on or before the first day of the respective calendar month in order to avoid delinquency. When payable only at meetings, members shall be in arrears a full month if payment is not made at the last meeting of the month.

No dues shall be accepted by local unions unless all outstanding assessments uniformly required have first been paid in full by the member.

Dues stamps issued by the International Union, properly cancelled, constitute the only valid receipt for dues payment.

Suspension, Expulsion and Other Penalties For Dues Delinquency

Sec. 6. (a) Delinquency—As soon as a member becomes delinquent in his dues, he becomes immediately subject to loss of employment opportunities and to discharge under a valid union-security clause, at the discretion of his local. The local also may establish other appropriate penalties, subject to the following:

(b) Suspension — Members in arrears with dues and/or assessments more than 2 months shall be suspended by the local union to which they belong as well as by the International Union. Suspension shall mean disqualification of all local and International Union privileges and benefits and of all right to participate in local proceedings.

(c) **Expulsion** — Members may be expelled for being in arrears with their regular dues or any assessment more than six (6) months, provided that they have received notice of their delinquency at least 24 hours prior to the expulsion.

Reinstatement of Expelled Members

Sec. 7. Any member who has been expelled for cause shall, on rejoining, comply with all conditions set forth in this Constitution covering admissions of new members and shall pay a new initiation fee, all fines, assessments and dues charged against him at the time of expulsion, except that the amount of dues shall not exceed six months' dues. Such fines, assessments, and back dues, less International assessments and per capita tax forwarded to the International Union with application and registration fees, shall be remitted to the local union from which he was expelled.

Designation of International Union as Exclusive Bargaining Representative

Sec. 8. Membership in the International Union constitutes an exclusive and irrevocable designation of the International Union by each member to engage in collective bargaining on his behalf, and an undertaking to be bound by all decisions of the International Union affecting his status and duties as a union member.

ARTICLE XVIII

Retiring Cards

When Discretionary or Mandatory

Sec. 1. Members shall be entitled to retiring cards whenever they leave the trade or geographical jurisdiction of the International Union, but the holding of a retiring card shall be compulsory if such leave extends to a period of not less than twelve months or if

work at another trade or occupation continues or is to continue for not less than twelve months. Members who cease to be wage workers shall continue their affiliation as retiring card members. Members entering the military or naval service shall continue their affiliation during service only as retiring card members.

How Issued

Sec. 2. Local unions are empowered to issue applications for retiring cards to their own members. Application for such status shall be made upon forms furnished by the International Union. Retiring cards shall not be issued to members delinquent in any dues or assessments to his local union.

Fee for Issuance

Sec. 3. A fee of \$2.00 shall be paid to the local union for the issuance of a retiring card, \$1.00 of which shall be forwarded to the International Secretary-Treasurer. Upon issuance of a retiring card, the member shall be required to surrender his membership book.

Rights of Holders

Sec. 4. Holders of retiring cards shall be exempt from the payment of union dues. Upon application to the local union, which issued the Retiring Card, such holders shall be readmitted to full membership rights without the payment of a new initiation fee upon the same terms and conditions as apply to all other full members. Local unions shall forward to International headquarters all retiring cards deposited with them; such cards shall show the date of their deposit.

Limitation on Holders

Sec. 5. Retiring card holders shall not be permitted to participate in any meetings of local unions.

Revocation and Expulsion

Sec. 6. Retiring card holders shall be subject to the same conditions for expulsion as govern other members of the International Union. Revocation of a retiring card shall be equivalent to expulsion from the International Union.

ARTICLE XIX

Traveling Cards

Composition of Traveling Cards

Section 1. Traveling cards shall consist of three sections as follows:

Part 1. To be filled out by the financial secretary of the local union issuing the card and to be forwarded to International Union Headquarters;

Part 2. To be similarly filled out, and held by the holder along with

Part 3. So that both may be deposited with the financial secretary of the local union to which membership is transferred. The latter shall then retain Part 2 for the local files and forward Part 3 to the International Union Headquarters.

Traveling cards shall be furnished to local unions by the International Secretary-Treasurer bearing sufficient postage at a price of one dollar (\$1.00) each.

When Issued

Sec. 2. Members shall be required to obtain traveling cards whenever changing their places of employment from the jurisdiction of one local union to another, or whenever seeking employment in the jurisdiction of a local other than the one in which they hold membership.

Members shall not be entitled to traveling cards unless they are paid up in their dues, assessments and fines, including the month of issue, and unless their period of affiliation in the International Union amounts to not less than one month.

Local unions shall furnish traveling cards to members upon a payment of two dollars (\$2.00) each.

Deposit of Traveling Cards

Sec. 3. Members shall be required to deposit their traveling cards within two weeks after their arrival in a new jurisdiction or be subject to a fine of five dollars (\$5.00).

Traveling cards shall not be valid if not deposited within a period of thirty days from date of their issue or renewal.

Should a member with less than six months International Union membership transfer from one local union to another, he shall be required to pay the difference in their initiation fees before being entitled to his transfer privileges.

A local union shall not refuse traveling cards submitted to them unless the area of which they form a part is engaged in strike, lockout, or other labor difficulties at the time of presentation and their right to such action has been duly brought before and approved by the General Executive Board.

Holders of Cards of Foreign Unions

Sec. 4. Members of national and international unions of foreign countries, holding clear and paid up cards, shall be admitted free of charge to any local unions, provided an agreement to that effect exists between such national or international unions and the Bakery and Confectionery Workers' International Union, but every such member must pay the stipulated registration fee.

ARTICLE XX

Trials and Appeals

Original Jurisdiction of the General Executive Board

Sec. 1. The General Executive Board may exercise original jurisdiction to try International Union officers, subordinate bodies, officers of subordinate bodies and individual union members for any conduct subject to disciplinary action.

Appeals from decisions of the General Executive Board by International Officers or subordinate bodies rendered hereunder shall be taken to the Convention whose decision shall be final and binding.

The General Executive Board shall adopt a code of procedure for the conduct of such trials and appeals which shall comply with the elements of due process of law.

Trials of Local Officers and Members— Procedure

Section 2. (a) A member or officer of a local union, charged with any violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Executive Board. If the member making the charges is a member of such Board then the President or Chairman of the local shall appoint a disinterested member as a substitute for such Board member. If the President or Chairman makes the charges then a substitute shall be appointed by the remaining members of the Executive Board.

(b) The charges shall be filed in writing in duplicate with the corresponding secretary of the local union which is to try the case. No member or officer of a local shall be tried unless he or she shall be served by the corresponding secretary, personally or by registered mail, with a written copy of such

charges, specifying the nature of the offense of which he or she is accused and designating the place and time of the trial, which shall not be less than ten days from the date the charges are served upon the accused. The accused may appear in person with witnesses to answer the charges, and may select a member of the local to represent him in the presentation of his defense. Court formality shall not control the proceedings.

(c) If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused shall continue to be entitled to full rights of membership or office in the local union.

(d) Upon the filing of such charges, and if the same are of such magnitude and seriousness as to jeopardize the interests of the local or International Union, then and in that event the General Executive Board, if it deems it advisable, may immediately suspend such member or officer until a decision has been rendered in the case.

Appeals of Local Officers and Members

Sec. 3. (a) In the event judgment is rendered against the accused, he or she may take an appeal from the decision of the Local Executive Board to the General Executive Board. The General Executive Board shall decide any appeal taken to it not later than six months from receipt thereof.

All manner of appeals shall be taken within fifteen days from the date of the rendition of the decision.

(b) The appellant shall mail a written notice of the appeal to the Corresponding Secretary or the equivalent officer of the General Executive Board, except

that in appeals to the Convention, the appellant shall publish notice of appeal in the official journal at least thirty days prior to the Convention. Pending an appeal, the decision appealed from shall remain in full force and effect unless the appellate body, upon application and the showing of exceptionally good cause, deems it appropriate to stay enforcement of the judgment. Appeals shall be heard either on the record made before the trial tribunal or by a re-trial, in the discretion of the body being appealed to. If the appellate body decides to consider the appeal on the trial record it shall have further discretion as to whether the parties shall appear to make oral argument or shall submit their arguments in writing. Decisions on the appeal shall be rendered as promptly as possible. The appellate body may fix the date of considering the appeal, but it shall proceed without unnecessary delay. Notice of that date shall be served personally or by registered mail on all parties interested in the particular case.

(c) If a member of the General Executive Board is a party to the appeal, then the International President shall appoint a substitute to consider the appeal. If the President of the International Union is a party to the appeal, then a substitute member shall be appointed by the remaining members of the General Executive Board.

(d) Failure of any interested party in any case to appear before any trial or appellate body at the time and place designated in the notice shall constitute a waiver of defense and the trial shall proceed and the appeal heard regardless of the absence of such party.

(e) Any party to a case, regardless of whether such party is the accused or not, being aggrieved of a decision rendered in a case shall be entitled to the same rights of appeal as are hereinbefore provided for an accused.

Jurisdiction of General Executive Board to Appoint Special Trustees

Sec. 4. (a) The authority of the General Executive Board to appoint special trustees over subordinate bodies may be exercised whenever the General Executive Board has substantial reason to believe that the affairs of the subordinate body are conducted in such a manner as to jeopardize the rights and interests of a member of that body, the local union, or of the International Union.

(b) Because of the emergency nature of this power a trustee may be appointed without previous notice or hearing. However, immediately upon the appointment of a special trustee the International President shall notify the officers of the affiliate involved (such notice may be given by telegram, ordinary mail, registered mail or telephone) that a hearing shall be held by the General Executive Board at which interested parties may be heard on the subject of retaining the special trusteeship. Such hearing shall take place not sooner than ten days and not later than twenty days after the appointment of the special trustee. If, upon such hearing, the General Executive Board decides that the subordinate affiliate should continue under the trusteeship, the subordinate affiliate shall have an appeal to the Convention in accordance with the provisions of this article. If, upon such hearing, it is decided that the subordinate affiliate does not require a special trusteeship, the subordinate affiliate and its officers shall revert to their former status and continue without trusteeship.

(c) Upon the appointment of a special trustee, the functions of all the officers of the subordinate body shall terminate and pass to the special trustee, subject to the direction and approval of the General Executive Board. The special trustee may, with the approval of the General Executive Board, reappoint former officers or appoint new temporary officers, who otherwise meet

all the qualifications to hold such office as set forth in this Constitution, in their place; and he shall take such other action as he deems necessary for the preservation of the rights and interests of the members of the subordinate affiliates and of the International Union. He shall submit periodic and complete reports of his actions and of the affairs of the subordinate affiliate to the General Executive Board.

(d) The special trustee shall take possession of all the funds, books, papers and other property of the subordinate affiliate and tender a receipt for same. He shall institute all necessary action to recover money or other properties of the subordinate affiliate.

(e) The special trustee shall operate for whatever time is necessary not in excess of one year, but may be continued beyond one year if, after further formal hearing, the General Executive Board so orders. Whenever self government is restored, the special trustee shall return all funds, books, papers and other property in his possession to the subordinate affiliate.

Appointment by General Executive Board of Representative to Try and Hear Cases

Sec. 5. Whenever the General Executive Board has jurisdiction to try and hear any matter, it may deputize any member or officer of the International Union to conduct the trial or hearing on its behalf. However, the person so deputized shall, at the conclusion of the trial or hearing, report to the General Executive Board, in writing, and the decision in the matter shall be made by the General Executive Board.

Grounds for Charges Against Members, Subordinate Bodies and Officers

Sec. 6. (a) The basis for charges against members, officers, or subordinate bodies for which he, she or it shall stand trial, shall consist of, but not be limited to, the following:

(1) Violation of any specific provisions of the Constitution.

(2) Violation of the member's and/or officer's oath.

(3) Gross disloyalty.

(4) Conduct unbecoming a member or officer.

(5) Secession or fostering of same.

(6) Any dishonorable act, which injures the labor movement in general or the International Union in particular.

(7) Defrauding the local or International Union or any affiliate of money or property; or drawing and accepting any benefits of the International Union to which he or she is not entitled.

(8) Remaining at work when called upon to strike, or taking the place of a union member on strike.

(9) Undermining the International Union by joining or giving aid and comfort to any organization hostile to the local or International Union.

(10) Gaining membership through false statements or by concealing material facts.

(11) Persecuting or injuring another member in his or her work.

(12) If an inspector of elections, making false returns or votes, or falsifying the returns.

(13) If a chairman of inspectors, failing to forward the reports to the General Executive Board in the manner prescribed in this Constitution.

(14) If a local union, or the authorized officer thereof, failing to call any election required by this Constitution or failing to provide for the casting of votes, in such an election.

(15) Violation of any regulations, rules, mandates and decrees of International and local officers or bodies.

(16) Wrongfully taking, retaining, mutilating, erasing, destroying or in any way injuring any money, books, papers or any other property belonging to a subordinate affiliate or to the International Union.

(17) Participation in any unauthorized strike, work stoppage or similar activities in violation of a collective bargaining contract.

(18) Such other acts and conduct which are inconsistent with the duties, obligations and fealty of a member of a trade union and which violate sound trade union principles.

Charges Not Preferred in Good Faith

Sec. 7. If charges are preferred against members, officers, or subordinate bodies and such charges are not sustained, and the trial or appellate body is convinced that the same were not brought in good faith or were actuated by malice, the costs and expenses incurred in defending such charges shall be paid by the person or body responsible for improper commencement of the suit. In addition, the trial or appellate bodies finding bad faith or malice shall impose such penalty as in their judgment is deemed proper under the circumstances. However, no one shall be expelled for preferring charges in bad faith without notice and trial as prescribed in this Article.

Stenographic Records

Sec. 8. In the manner of trials, appeals and other hearings, it shall not be necessary to maintain a stenographic record unless request for the same is made by any directly interested parties to the proceedings; if such request is made, the party making it shall be responsible for the cost of a competent reporter, and three (3) copies of the transcript shall be prepared so

that each party and the trial body may have one. The reporter shall attach an affidavit to the transcript, stating that the same is a true and accurate transcript of the evidence taken at such trial or hearing.

Decisions and Penalties

Sec. 9. Decisions and penalties imposed upon members, officers or subordinate affiliates found guilty of charges may consist of reprimands, fines, suspensions, expulsions, revocations of charters, orders to perform or refrain from performing any specified acts, or such other disciplinary action as shall be deemed necessary or appropriate in the circumstances. The judgment of any trial or appellate body must be complied with before further appeal may be taken (unless the appellate body, upon request and in unusual cases specifically grants an exception) and such judgment shall stand and remain in full force and effect until reversed by a higher body. Upon failure to comply with any such judgment the member, officer, or subordinate affiliate shall stand suspended.

Exhaustion of Remedies

Sec. 10. Every member, officer or subordinate affiliate against whom charges have been preferred and disciplinary action taken shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any other court or tribunal. Failure so to do will subject the member, officer or subordinate affiliate to expulsion and/or revocation of charter and to liability for all legal, court and similar expenses resulting from such failure.

ARTICLE XXI

Dissolution of International Union

This International Union cannot dissolve so long as seven (7) local unions desire to continue affiliation.

ARTICLE XXII

Effective Date and Amendment of Constitution

This Constitution as amended and revised by the Twenty-fifth Convention becomes effective on adoption, and may be amended only by Convention or referendum vote. Its provisions shall supersede the provisions of all former Constitutions and Laws.

Order of Business for Local Union Meetings

1. Calling of meeting to order.
2. Pledge of allegiance to the flag.
3. Roll call of officers.
4. Reading of minutes.
5. Applications for membership.
6. Initiation of new members.
7. Payment of dues, assessments or fines.
8. Communications and bills.
9. Reports of committees, delegates and officers.
10. Reading of monthly membership, financial, trustees' and other reports to the International Union.
11. Call for out-of-work list.
12. Call for job vacancy information.
13. Nomination of officers.
14. Election of officers.
15. Installation of officers.
16. Unfinished business.
17. New business; welfare of the Local and International Union.
18. Receipts and disbursements (itemized).
19. Adjournment.

Parliamentary Rules

Rule 1. On motion, the regular order of business may be suspended at any time by a two-thirds vote of the meeting, to dispose of any urgent business.

Rule 2. All resolutions and resignations should be submitted in writing.

Rule 3. Any conversation, by whispering or otherwise, which is calculated to disturb a member while speaking or hinder the transaction of business, shall be deemed an act of disorder.

Rule 4. All questions of parliamentary nature, not provided for in these rules, shall be decided by Robert's Rules of Order.

Motions

Rule 5. A motion must be seconded, in order to have recognition by the presiding officer, and the mover as well as the seconder must rise and be recognized by the chair.

Rule 6. A motion may be withdrawn by its mover, with the consent of the member seconding it, but a motion once debated cannot be withdrawn except by a two-thirds vote.

Rule 7. A motion to amend an amendment shall be considered in order, but no motion to amend an amendment to an amendment shall be permitted.

Rule 8. Any member may call for the division of a question when its sense will admit thereof.

Debate

Rule 9. A motion shall not be subject to debate until it has been stated by the chair.

Rule 10. When a member wishes the floor he shall rise and respectfully address the chair, and if recognized by the chair, he shall be entitled to the floor.

Rule 11. If two or more members rise to speak at the same time, the chair shall decide which one is entitled to the floor.

Rule 12. Members shall confine themselves to the question under debate and avoid all personal, indecorous or sarcastic language while speaking.

Rule 13. No member shall interrupt a speaker except to state a point of order, and he shall then definitely state the point, and the chair shall decide the same without debate.

Rule 14. If a member, called to order while speaking shall take his seat until the point of order is decided, he may then resume speaking only if the decision so permits.

Rule 15. If any member shall feel himself personally aggrieved by the decision of the chair, he may appeal to the local union from the decision.

Rule 16. When an appeal is made from the decision of the chair, the Vice-President shall act as chairman; such appeal shall then be stated by the chairman to the meeting as follows: "Shall the decision of the chair be sustained as the decision of the meeting?" The member shall then have the right to state the grounds of his appeal, and the chair shall give the reason for his decision, after which the union shall proceed to vote on the appeal without further debate, and it shall require a majority vote to sustain such appeal.

Rule 17. No member shall speak more than once on the same subject until all the members desiring the floor shall have spoken, nor more than twice without unanimous consent.

Rule 18. The presiding officer shall not speak on any subject unless he retires from the chair, with the exception of points of order and appeals from the decisions of the chair, and in case of a tie he shall have the deciding vote.

Privileged Questions

Rule 19. When a question is before the meeting no motion shall be in order except: (1) To adjourn; (2) To lay on the table; (3) For the previous question; (4) To postpone to a given time; (5) To refer or again commit; (6) To amend; and these motions shall have precedence in the order herein arranged. The first three of these motions are not debatable.

Rule 20. When the previous question is moved and seconded, it shall be put in this form: "Shall the main question be now put?" If this is carried all further motions, amendment and debate shall be excluded and the main question put without delay.

Rule 21. If a question has been amended, the question on the amendment shall be put first. If more than one amendment has been offered, the question shall then be put as follows: (1) Amendment to the amendment; (2) Amendment; (3) Original proposition.

Rule 22. When a question is postponed indefinitely it shall not again be given recognition except by a two-thirds vote.

Rule 23. A motion to adjourn shall be always in order except: (1) When a member has the floor; (2) When members are voting; (3) When it has been decided to take the previous question.

Taking the Vote

Rule 24. Before putting a question for voting the presiding officer shall ask: "Is the union ready for the question?" Then it shall be open for debate. If no member rises to speak, the presiding officer shall then put the question in this form: "All in favor of the motion say 'Aye,' " and after the affirmative vote is expressed: "Those of the contrary opinion say 'No.' " After the vote is taken he shall immediately announce the result.

Rule 25. When the presiding officer has started the voting, no further debate or remarks shall be al-

lowed unless a mistake has been made, in which case the mistake shall be rectified, and the presiding officer shall again take the vote.

Rule 26. Before the presiding officer declares the vote on a question, any member may ask for a division of the house; then the chair is in duty bound to comply with the request, and a standing vote shall then be taken, and the secretary shall count the same.

Rule 27. Every member present shall vote on all questions before the union unless personally interested or excused by the union.

Rule 28. When a question has been decided, it can be reconsidered only at the same meeting or on the next regular meeting night.

Rule 29. A motion to reconsider must be made and seconded by two members who voted with the majority.

Rule 30. All questions, unless otherwise provided, shall be decided by a majority of all votes cast.

Installation of Local Officers

The newly-elected officers shall be installed at the first meeting following their election, unless otherwise decided by the local union.

Under the fifteenth order of business the President may call and request some competent member to act as the Installing Officer.

The Installing Officer shall then inquire whether all the requirements of the Constitution have been complied with by the retiring officers.

If an affirmative answer is made the President shall request the officers to vacate their seats and the Secretary shall announce the names of the officers-elect, who will step up as their names are called and form a half-circle around the Chair.

The Installing Officer shall then take the chair, and with three raps of the gavel, call upon the meeting to rise, and proceed with administering the oath of office.

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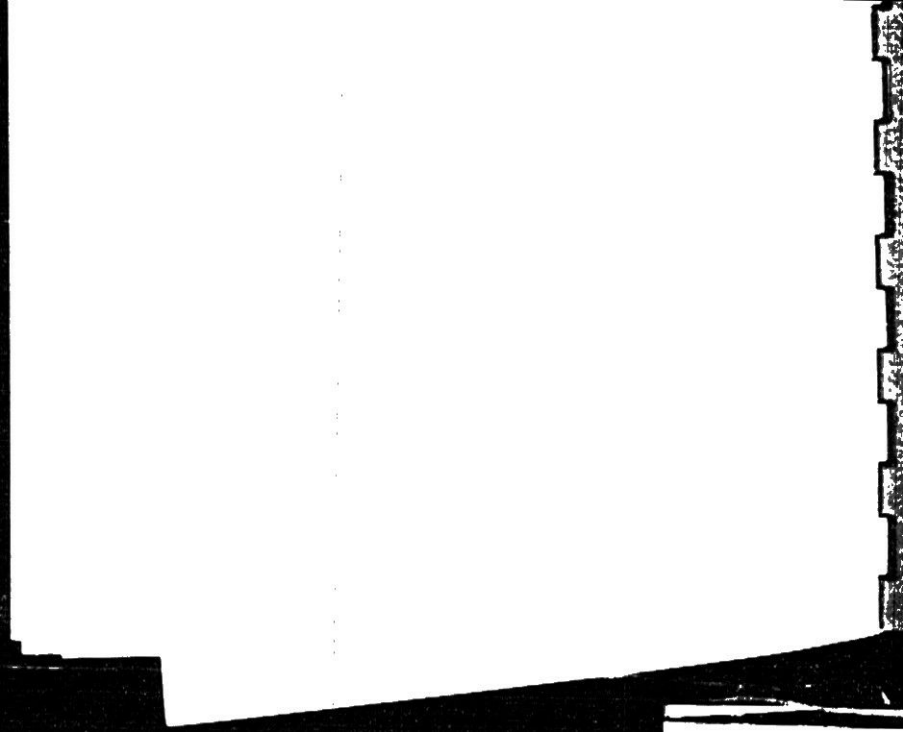
Membership Oath

I solemnly promise . . .
to maintain the Constitution of the International
Union . . . and the By-Laws of this or any other Local
Union . . . with which I may become affiliated . . .
as they are now constituted or may later be changed.

I promise to maintain the dignity of this organiza-
tion . . . and to further its objectives.

I furthermore promise that I will not join . . .
or render aid or comfort to any organization . . .
hostile to the Bakery and Confectionery Workers'
International Union of America . . . and that I will
keep secret the proceedings of this Union.

I also promise that I will, whenever possible, . . .
purchase only Union Label goods . . . and that I will
patronize only those establishments . . . that display
Union cards and Union service buttons . . . and that
I will aid and assist in bringing to justice . . . any



BRIEF FOR INDIVIDUAL APPELLEES,
MILLER et al.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 14, 443

377

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PETER H. OLSON
as Special Trustees of Local 118, Bakery and
Confectionery Workers' International Union of
America and as Acting Secretary-Treasurer of
the
Bakery and Confectionery Workers' International
Union of America

Appellant,

v.

CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Appellees, Miller, Lockwood,
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Link

QUESTIONS PRESENTED

Appellees^{*} state that in their opinion the questions are:

1. When a plaintiff purports to sue as a trustee of a local union, and the allegations of his complaint -- as well as the undisputed facts of record -- show that the local has been dissolved under the applicable International Union Constitution and that notification of his claimed appointment as trustee was not given in accordance with that Constitution, does he have standing to sue or must his complaint be dismissed?

2. When a plaintiff claims local union property in the purported status of "Acting Secretary-Treasurer", and the applicable International Union Constitution does not provide for any such office or any authority to create one, and in any event does not authorize the turning over of any local property under the circumstances alleged in the complaint, does the plaintiff have standing to sue or must his complaint be dismissed?

3. Shall dismissal of a suit brought to recover property of a local union be affirmed, when the complaint on its face shows that a schism situation is involved, and none of the following is joined as a party: (A) The local of the old International, whose property is claimed; (B) The local of the new International, which is claiming the property; (C) Members of the local who might be opposed both to the purported trusteeship of the old International and to affiliation with the new; and (D) Employers to be affected by the claimed relief regarding check-off clauses, interference with bargaining rights, and the like?

4. Shall dismissal of a complaint be affirmed when it requests relief which cannot be granted under the nation's labor relations policy and statutes?

* "Appellees" throughout this Brief means the individual appellees on whose behalf this Brief is submitted; and not any Bank appellees.

(ii)

5. Shall dismissal of a complaint asserting rights over local union property be affirmed when its allegations, as well as the undisputed facts of record, show that the International Union Constitution on which the suit is purportedly grounded has been violated by the expulsion of the International from the AFL-CIO as corrupt and dominated by corrupt influences?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,443

PETER H. OLSON
as Special Trustees of Local 118, Bakery and
Confectionery Workers' International Union of
America and as Acting Secretary - Treasurer of
the
Bakery and Confectionery Workers' International
Union of America,

Appellant,

v.

CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR INDIVIDUAL APPELLEES,
MILLER, et al.

COUNTERSTATEMENT OF THE CASE

A. Allegations of the Complaint.

Appellant's Brief (hereinafter referred to as "A. B.") purports to divide the papers before the District Court into two categories, "The Allegations of the Complaint", and "Other Factual Allegations Of Record." (A. B., 2, 6). Appellees agree that this distinction may be

significant on this appeal, but most emphatically disagree with the classification of one particular document. That is the Affidavit of Plaintiff which was submitted with the complaint. (J. A. 17).

Appellant does not include the allegations of this affidavit with "The Allegations of the Complaint", but this is plainly erroneous. Paragraph 20 of the Complaint refers to "The Affidavit of Plaintiff filed herewith and hereby incorporated by reference." (J. A. 7). Obviously, the allegations of this affidavit must be considered as though they were allegations within the body of the complaint. For the purpose of testing the sufficiency of the complaint by the recitals on its face, this Affidavit must necessarily be included.

This is of extreme importance, because it gives the background for the claim of these appellees to the union property in issue. Plaintiff's own Affidavit shows that Local 118, the property of which is in issue, held a meeting on December 21, 1957, and passed a particular resolution of disaffiliation from the Bakery and Confectionery Workers' International Union of America (hereinafter referred to as "BCW") and affiliation with the American Bakery and Confectionery Workers' International Union (hereinafter referred to as "ABC"). (J. A. 22). This resolution is attached to the affidavit, (J. A. 21), and hence to the complaint. It recites that the BCW grossly violated the basic compact, relationships, understanding and contract between BCW on the one hand and its membership and locals on the other. (J. A. 24). It declared that BCW "in flagrant breach of its fiduciary obligation as a trustee, has permitted the unlawful diversion of such funds for the personal use and pleasure of its president and others." Ibid. And it declared that "the said Union in violation of the fundamental understanding and agreement with its membership and subordinate bodies, has been expelled by the AFL-CIO as dominated by corrupt influences." Ibid. Further, it reported that AFL-CIO had chartered the ABC. (J. A. 25).

While the resolution is in blank form, (J. A. 25) the appellant attested that the action of Local 118 at the December 21, 1958 meeting was "in strict obedience to the 'suggested resolution'." (J. A. 22). It is crystal clear that these appellees were retaining this property pursuant to their belief and conclusion that BCW had "by its own actions destroyed the bonds of affiliation between itself and this Local"; and that they were following the action of the membership meeting providing that all the Local's property should follow the action of the majority and that "the local officers take all steps necessary to protect the property and assets of the Local." (J. A. 25).

All the foregoing, it may be reiterated, must be considered as appearing on the face of the complaint. All these allegations are to be considered in testing the sufficiency of the complaint, apart from the other evidence submitted.

B. Other Factual Allegations of Record.

When it reached its judgment in this case, the District Court had before it a substantial volume of factual material. As the parties well knew, they had submitted much more than merely the complaint on one side and the motion to dismiss on the other. Appellant had filed a motion for preliminary injunction together with the complaint; and after appellees had filed their papers in reply to the original papers commencing the case, appellant filed a motion to strike certain portions of the Affidavit of Defendant-Appellee McClosky. Appellees filed a counter-motion to strike certain portions of Appellant's Affidavits. In addition, the Bank Defendants had filed certain motions and supporting papers. In the course of these proceedings, the parties not only provided the Court with an ample general background of the facts of the case, but also presented detailed evidence as to at least one issue, whether there were seven members of Local 118 who desired to remain with BCW.

The general background was provided principally in the McClosky Affidavit (J. A. 33 ff.). This explained how the transfer of the Local's affiliation from BCW to ABC had come about, and why it had been made necessary. Specifically, it gave the corruption of BCW as the sole reason, (J. A. 34), and recited the history of the exposure of this corruption (J. A. 34, 40). It attached two exhibits which both documented this corruption and indicated how it had come to public notice as well as the attention of the BCW membership. Exhibit 1 was the volume of the Hearings before the Select Committee on Improper Activities in the Labor or Management Field, Pursuant to Senate Resolution 74, 85th Congress, which dealt with the investigation of the BCW. (JA. 35). Exhibit 2 was the transcript of the AFL-CIO Convention proceedings dealing with the Report of the AFL-CIO Appeals Committee on the BCW, and the expulsion of the BCW from the AFL-CIO (J. A. 37). Excerpts from this Exhibit, summarizing the crucial findings, and providing the action taken, appear at J. A. 52-62.

The four principal types of corruption which moved the AFL-CIO were summarized as "(a) Improper Financial Relationship Between President Cross and Martin Philipsborn , a Bakery Industry Employer Conflict of Interest", (J. A. 56); "(b) President Cross' Improper Acceptance of Cadillac from a Local Union Under Trusteeship and its Concealment on Local's Books As An Organizing Expense", Ibid.; (c) Diversion of Union Funds for Improper Purposes, Improper Accounting Procedures on Expenses, Commingling of Union and Personal Funds", (J. A. 57); and "(d) Exoneration of and Failure to Proceed Against Former Vice President Stuart", (J. A. 58). The Report summarized the proceedings culminating in the suspension and expulsion of BCW, and the applicable provisions of the AFL-CIO Constitution. (J. A. 53-55, 59-60, 62.)

In illustration and substantiation of its references to corruption on the part of Plaintiff's principals, the McClosky Affidavit made specific references to these Exhibits. (J. A. 37-38)

Further, the McClosky Affidavit recounted the efforts and struggle within the BCW of those members who desired a clean union affiliated with the AFL-CIO, under the leadership of a Committee to Preserve Integrity Within the BCW. (J.A. 39-40). When these efforts became futile because of the refusal of the BCW to take corrective action, these members were forced to form a new union, the ABC. (J.A. 40).

The facts as to the disaffiliation meeting of Local 118 are set forth in the McClosky Affidavit, including the notice sent to each member, specifying the purpose of the meeting, (J.A. 40-41); a stenographic transcript of the meeting attached as Exhibit 3, (J.A. 41), the resolutions there adopted, (J.A. 42-43), which did indeed follow the models incorporated, as discussed above, in the complaint. Moreover, the Affidavit discussed the relationship between the local and the BCW, pointing out that the local antedates the BCW, (J.A. 44), regarded affiliation with the AFL and AFL-CIO as vital, (J.A. 44-45); and had not received assistance from the BCW. (J.A. 45-48)

The parties litigated the issue of seven members with some detail and thoroughness. The McClosky Affidavit denied knowledge of any members who desired staying with the BCW; and attested that the vote at the meeting had been unanimous. (J.A. 43). Appellant countered with a Supplemental Affidavit which did not deny that the vote had been unanimous, but stated that certain members, specifying nine by name, "have authorized the International Union (BCW) and counsel retained by it to use their names in proceedings instituted for the protection of their contract rights and benefits and their Local's funds and properties." (J.A. 69). Appellees responded by an affidavit of the officer in charge of the local's records, which stated that two of the nine named were in good standing and had evidently signed the BCW authorizations voluntarily and knowingly, but that two others were not in good standing and the remaining five had made affidavits, which were attached and submitted to the Court, that they had not signed the BCW authorizations with adequate knowledge or understanding, and were now withdrawing any

authorization to the BCW and personally ratifying and endorsing the local's action in disaffiliating from BCW and affiliating with ABC. Affidavit of Adolf Hellwig, (J. A. 104-106).

C. The Proceedings Below.

On the basis of the record itself, as summarized above, the Court can judge the validity and accuracy of appellant's implication that only the complaint and the motion to dismiss can properly be considered as the record before the Court, because "Other facts were so thoroughly disputed or else redundant that they could not have formed a basis for adjudication." (A. B. 8). The plain fact is that all the documents noted above were properly before the Court.

Likewise, appellees hardly concur in the proposition that the consideration by the Court below or this Court is restricted in any way by their own memorandum of law below. (A. B. 8-9)

SUMMARY OF ARGUMENT

1. Appellant had no standing to sue as "Special Trustee of Local 118, BCW."

A. Local 118 had dissolved prior to the filing of this suit, pursuant to the International Union Constitutional provision that dissolution may be effectuated if there are not "seven members remain(ing) in good standing" who "desire to retain the charter". The vote to dissolve, to disaffiliate from the International, was unanimous. The time of the Local's action is the only legally relevant time for determining whether or not there were seven members opposing the dissolution, or whether the dissolution was effective.

The foregoing facts are demonstrated both on the face of the complaint, and on the undisputed facts of the entire record before the Court below.

B. Appellant was not validly appointed a trustee in any event, for the applicable Union Constitution requires that notice of trusteeship must be given "immediately" and by the "International President"; and it is clear on the face of the complaint that the notice given was neither immediate nor by the International President.

2. Appellant had no standing to sue to recover local union property himself, as "Acting Secretary-Treasurer, BCW."

A. The BCW Constitution contains no such office, and no authority to create any such office.

B. The BCW Constitution does not authorize any claim by the International Secretary-Treasurer, the office whose powers appellant is claiming, to local union property. The Constitutional provision relied on is inapplicable under the allegations of the complaint, for two reasons. First, it requires dissolution of the local, and the complaint expressly alleges that this local was not dissolved. Second, it authorizes the Secretary-Treasurer only to delegate the power of seizure to another, but not to exercise it himself, and appellant is attempting to exercise the power himself in this suit.

3. Under the circumstances of this case, the dismissal of the complaint for lack of indispensable parties should be affirmed. This is a suit for Local union property, but none of the following is joined: Local 118, BCW, the property of which is claimed by appellant; Local 118, ABC, which, under the allegations of the complaint, is treating the property as its own under a valid claim of right; members of Local 118 whose interests might be antagonistic both to the trusteeship claimed by BCW and to the affiliation with ABC; and employers affected by the relief as to check-off payments, recognition as collective bargaining agent, and the like.

4. This complaint proceeds on the theory that once a BCW trusteeship is imposed on a local union, the membership of that local union have no effective rights to change their union membership or affiliation, to

change their bargaining representative or the terms of their collective bargaining agreements, or to engage in any other freedom of action. This thesis, and the corresponding relief prayed for in the complaint, violates the right of freedom of association, the national labor relations policy embodied in the Labor-Management Relations Act, 29 U.S.C. § 151 et seq., and the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq.

5. Appellant had no rights enforceable against appellees under the BCW Constitution, and appellees had no corresponding duties, because that Constitution was violated in fundamental provisions prior to the events in litigation. The Constitution, as well as the basic understandings and compact between the BCW on one hand and its locals and membership on the other, on its face required legitimate and honorable trade unionism, and affiliation with the American labor movement. But under both the allegations of the complaint and the undisputed facts of record, BCW was expelled from the AFL-CIO for being corrupt and dominated by corrupt influences. Plaintiff thus obviously comes with "unclean hands" and as he is suing on the basis of a Constitution which has been fundamentally violated, the judgment of dismissal must be affirmed.

ARGUMENT

I. APPELLANT LACKED STANDING TO BRING THIS SUIT AS "SPECIAL TRUSTEE OF LOCAL 118, BCW."

A. There Was No Local 118, BCW, At The Time Appellant Filed This Suit

Appellant styled himself as suing as "Special Trustee of Local 118, BCW." He seeks thus to base his standing on the trusteeship provision of the BCW Constitution. (A.B. App. C, 48). The very title under which appellant sues, as well as the Constitutional provision on which he relies, obviously requires the existence of Local 118, BCW. If there were no such local, no one could be Trustee and there could be no legal powers assertable under trusteeship provisions.

To determine whether a union which previously was a BCW local was still existent as such at the crucial time, the BCW provision dealing with the dissolution of local unions is of prime importance. This is Art. XIV, Sec. 22, which provides that "No local can dissolve while seven members remain in good standing and desire to retain the charter." (A.B., App. C. 36).

The question to be determined is whether Local 118 did dissolve its affiliation with BCW, at the time when it purported to do so, under the allegations of the complaint. This was the meeting of December 21, 1957. (J.A. 22). This date, then, is the touchstone date for deciding whether there was any Local 118, BCW, in existence, to give appellant standing to sue as Special Trustee.

When a local takes disaffiliation action, "transferring the union's funds to the defendant, to be held in trust or in custody for the said union, the union and its membership as of that date by that act asserted a right to the funds in question adverse to the funds in question adverse to the plaintiff . . .", and rights are to be determined as of that date. Green v. Brophy, 71 App. D.C. 299, 303, 110 F. 2d 539, 543 (emphasis added). And the Court considered the issue of the representative status of the parties "as of the date of the transfer of the funds." Ibid.

Unless there were seven members desiring to maintain that status as of the time of the action dissolving Local 118 as a BCW affiliate, and transferring its funds out of any BCW affiliation, there was no Local 118, BCW, as of the legally determinative time, and appellant had no standing to sue as Special Trustee. There is, however, no allegation in the complaint respecting the existence of seven members in good standing at that time.

There is an allegation in the present tense, presumably denoting the date of the filing of the complaint, January 4, 1958. The allegation is that "Plaintiff is informed and believes and upon such information and belief alleges that more than seven members in good standing of Local 118 desire to retain its charter." (J.A. 4).

Plainly, this is as far removed as yesterday from today, from an allegation that seven members existed, as of the legally determinative time. Pleadings are to be liberally construed, to be sure, but a plaintiff who makes his allegations as of the present time cannot be read as referring to a fixed time in the past.

As will be developed in the discussion below of the evidence introduced on this issue, Appellant's theory evidently is that there are no time limits as to the seven members. Whenever he can find seven members who state that they would like to retain the BCW charter, appellant seems to think he can contend that there is compliance with the BCW Constitution and he then has standing to sue. This hardly accords with good sense. An organization which dissolves is dissolved from that time forward. If there were not seven members objecting to its dissolution at that time, the organization is dead. A new local is possible if seven members are therefore found, but the old local has passed on. Its status is not in limbo, and not in life. It is no more.

On December 21, 1957, Local 118, BCW, either dissolved or did not dissolve. There are no grays in the issue; it is either black or white. The allegations of the complaint show that a local meeting did

take place on that day and did pass resolutions of disaffiliation from BCW, thereby accomplishing its dissolution as a BCW local. (J.A. 22).

As for any who might now oppose the disaffiliation from BCW, "It is too late for them to be heard after the resolutions were adopted and acted upon and obligations thereunder incurred." Crawford v. Newman, 175 N.Y.S. 2d 903, 906 (Sup. Ct.). In the absence of any allegation that there were seven members as of that time who desired to retain BCW affiliation, the complaint failed to allege an integral element of the legal authority upon which it purportedly rested, and is fatally defective.

It is plain that appellant did his utmost to find seven members who desired to stay with BCW -- as of any time -- to provide some factual basis for his claim of standing to sue. Appellant obviously had adequate opportunity to present evidence on this issue. There is no allegation and can be no implication that the International lacked records; and local records were turned over when the McClosky deposition was taken. (Cf. A.B. 21). And appellant did present to the Court the names of nine members who allegedly had "authorized the International Union and counsel retained by it to use their names in proceedings instituted for the protection of their contract rights and benefits and their local's funds and properties." (J.A. 69). But appellant did not present the names of any members who were claimed to have desired retention of the BCW charter as of the time of the dissolution of Local 118 as a BCW local.

Appellant apparently solicited every member of Local 118 for the authorization as to the litigation, and also had representatives visiting the homes of Local 118 members. (J.A. 106). This is supported also by the deposition of the appellant, which may be considered by this Court if it should believe that an unsigned deposition is properly included in its records; see p. 28, infra. Even the nine claimed by appellant were proved to be only two; for the others either were not members in good standing or repudiated the authorization given BCW. (J.A. 105).

And each of the last number personally ratified and endorsed the action of disaffiliation, or dissolution. Ibid.

There was no dispute as to the material facts. Appellant is concerned with present, or event future loyalties. (A.B. 21-23). Appellees are concerned with the only legally relevant fact, past conduct as of the crucial time.

The action of the local was unanimous. (J.A. 43). There is no dispute that notices were sent out to each member and included notice that the disaffiliation issue was to be decided. (J.A. 40-41). A transcript of the local meeting, certified to by an impartial reporter, is in the record as Exh. 3 to the McClosky affidavit. (J.A. 41). Appellant plainly had ample opportunity to present contrary evidence, and attempted to prove the existence of the seven members needed to support his claim of standing to sue. That he failed to do so, that he was utterly unable to produce even one as of the crucial time, is sufficient reason for this Court to affirm the judgment of dismissal below.

**B. Appellant Lacked Standing To Sue As Special
Trustee For Other Reasons.**

The BCW Constitutional provisions, under which appellant claimed to gain standing to sue as a Special Trustee, require that "immediately upon the appointment of a special trustee the International President shall notify the officers of the affiliate involved . . ." (A.B. App. C, p. 48). The undisputed facts show that the notice in this case was neither immediate nor given by the International President.

Under the allegations of the complaint, appellant claims he was appointed special trustee on December 17, 1957. But the notice was not sent until December 20, 1957. (J.A. 28). And it was signed by appellant himself, and not by the International President. (J.A. 29).

It requires little argument to conclude that "immediately" does not encompass a delay of three days (particularly in a situation which

is labelled "emergency"); and that "International President" does not mean "Special Trustee" or, indeed, anyone other than the International President. On the face of the complaint, therefore, this trusteeship was not established in conformity with the BCW Constitution. For this reason as well as the unanimity of the disaffiliation action, appellant clearly lacked standing to sue as Special Trustee.

II. APPELLANT LACKED STANDING TO BRING THIS SUIT AS "ACTING SECRETARY-TREASURER, BCW."

Appellant is in an even worse position on his claim of standing as "Acting Secretary Treasurer, BCW." The position of Special Trustee is at least provided for in the BCW Constitution; and if appellant had shown he was entitled to it, the Constitution might have authorized the action he took. Neither of these circumstances is available to appellant on his claim of standing as Acting Secretary Treasurer.

A. There Is No Such Office As "Acting Secretary Treasurer."

The BCW Constitution contains no such position as Acting Secretary-Treasurer. Appellant clearly has no standing to sue as a union officer when the Union Constitution under which he is suing contains no such office as he is purporting to fill.

This is no small matter, as is evident from the general structure of the BCW Constitution, which is typical of that of almost every organization. That Constitution specifies particular officers, and specifies how they shall be elected -- in this case, by Convention vote. (A. B., Exh. C, 11-14). It would be a fundamental and absolute violation of the Constitution for any one to presume to create new offices, or to fill the existing offices in any but the manner specified in the Constitution. The BCW Constitution does authorize the General Executive Board to fill vacancies. Art. IV, Sec. 6; id at p. 13. But there is no authority whatever for the creation of new offices, and there is no provision

whatever for any Acting Secretary-Treasurers.

The claim that appellant's standing may be resurrected by the subsequent purported ratification of his status should not be considered by this Court, as obviously extrinsic to the record. (A.B. 25, App. B.) It is immaterial in any event to the issue of standing to sue at the time of suit. The attempted ratification merely points up the original invalidity of the purported "Acting Secretary-Treasurer" status.

Moreover, the cases cited by appellant are not in point. (A.B. 25). Phillips v. Payne, 2 Otto (92 U.S.) 130 involved a public official and not any union situation; and the Court expressly excluded this issue from its decision in the case. Id. at 132. In Spitzer v. Ernst, 190 Misc. 47, 72 N. Y. S. 2d 570, the officer involved had been elected to the position in issue; in this case there was admittedly another person who had been elected to the position according to the BCW Constitution, and who had claim thereto. In Steinmiller v. McKeon, 21 N.Y.S. 2d 621, the Court based its ruling on a de jure ruling, interpreting the applicable Constitution. Further, the Court held that the action was maintainable by an individual member under the local practice. In this case, the complaint contains no allegations adequate to support a class suit, as appellant back-handedly seems to recognize. (A.B. 25, n. 11).

B. The Action Taken Was Not Authorized.

Moreover, making the contrary to fact assumption, arguendo only, that appellant may be assumed to be the elected International Secretary-Treasurer, he would have no standing here, under the plain allegations of his Complaint. Under paragraph 33, quoting the BCW Constitution, the International Secretary-Treasurer (1) if a local union should "dissolve, secede, or have its charter revoked" (then and only then) (2) "may authorize, in writing, a member of a nearby local or a representative to take charge of and turn same over to the International Union." (J.A. 10). Neither of these conditions has been met in this case.

1. The complaint not only carefully refrains from alleging that Local 118, BCW, has dissolved, seceded or had its charter revoked, but, on the contrary, affirmatively and unqualifiedly alleges that nothing defendants did has effectuated secession, dissolution or disaffiliation. (J.A. 7, par. 22). The complaint cannot be read as meaning yes when it says no, under any theory of interpreting pleadings. Appellant says his pleading was in the alternative, (J.A. 25), but it clearly reads otherwise. His subsequent descriptions or desires do not alter the text or the meaning of the complaint actually filed. Under the allegations of the complaint, whatever powers the International Secretary-Treasurer may have cannot be applied, or sued on, in this case.

2. And even if they could be, those powers, on the face of the complaint, do not extend to the International Secretary-Treasurer's attempting to seize the local's assets for and by himself. The BCW Constitution authorizes only a delegation of such authority to some other member or representative. This and only this is what he has discretion to do. This Constitutional provision states precisely what is authorized. Only delegation is; the International Officer himself is not to be running to the field and administering these situations himself. To permit the International Secretary-Treasurer to arrogate unto himself powers which the BCW Constitution has assigned to others is to render nugatory this provision of the Constitution. Appellant can have no right under the BCW Constitution to seek this relief as Acting Secretary-Treasurer. The complaint was properly dismissed for lack of standing to sue.

III. THE COMPLAINT WAS RIGHTLY DISMISSED BECAUSE
OF THE ABSENCE OF INDISPENSABLE PARTIES

A. Controlling Legal Principles.

The parties are evidently in agreement that Green v. Brophy, 71 U.S. App. D.C. 299, 110 F. 2d 539, is controlling on this point. (A.B. 26). Accordingly, it seems desirable to give a fuller analysis of that case than is contained in Appellant's Brief.

In that case, a particular local which was directly affiliated with the AFL voted to disaffiliate from the AFL and to transfer its funds to the CIO to be held in trust for the local. The AFL Constitution provided that no local could disband while seven members desired to retain the charter, and that upon dissolution or suspension of a local, the AFL would assert a trusteeship, for the benefit of a reorganized local. William Green, as President of the AFL, and other individuals asserting trusteeship over the local on behalf of the AFL, sued John Brophy, John L. Lewis and other CIO officials, who were alleged to be the trustees of the local's funds, in order to obtain the funds and property of the local.

Neither the local union itself nor any members who were beneficiaries of the trusteeship asserted by the plaintiff were joined as parties. The District Court granted a motion to dismiss for failure to join indispensable parties. This Court affirmed, in an opinion written by Justice (later Chief Justice of the United States) Vinson.

The basic inquiry when an indispensable party issue is raised, said the Court, is "whether the interests of persons not before the Court would be so affected, and the controversy so left open to future litigation, as would be inconsistent with equity and good conscience." 71 U.S. App. D.C. at 301, 110 F. 2d at 541. Litigation "requiring decision as to the legal consequences to be attached to a relationship where only one party thereto is made a party to the action is perhaps the clearest case of failure to join an indispensable party." 71 U.S. App. D.C. at 302, 110 F. 2d at 541-2.

Applying this test, the Court inquired what legal relationships were involved in the resolution of the controversy. The Court discussed two legal relationships: that between the local and the plaintiffs; and that between the local and its membership on the one hand and the defendants on the other.

At the heart of the first relationship is the legal question whether the local still was in existence. "The existence of the union is inconsistent with the plaintiff's trusteeship . . ." 71 U.S. App. D.C. at 303, 110 F. 2d at 543.

"Thus trial of this action will require, in the first instance, a judicial determination respecting the union's status. The union, party with the plaintiff to this legal relationship, has not, however, been joined as a party to this action. As heretofore expressed, litigation requiring a decision as to the legal consequences to be attached to a relationship is perhaps the clearest case of failure to join an indispensable party. That precisely describes the instant situation. Hence, the union must affirmatively be given an opportunity to assert its rights in respect to this matter." 71 U.S. App. D.C. at 302, 110 F. 2d at 542-543.

The local union was likewise an indispensable party to litigation involving its legal relationship to its members and to defendants. "In transferring the union's funds to the defendants, to be held in trust or in custody for said union, the union and its membership as of that date by that act asserted a right to the funds in question adverse to the plaintiff and established a legal relationship . . . with the defendant." 71 U.S. App. D.C. at 303, 110 F. 2d at 543. Plaintiff could not recover unless this transfer was held wrongful. Accordingly, the Court concluded:

"By reason of their relationship with the defendant, and their respective claims to the funds in question, it seems clear that both factions of the membership of the union as of the date of the transfer of the funds, and the union, have material interests which a decree in this controversy will affect." Ibid. (emphasis added).

Having identified the indispensable parties, the Court then considered whether they were adequately represented by some party already in the case. The Court decided that neither the plaintiffs nor the defendants could adequately represent either the local or the conflicting membership factions. The Court in fact pointed out that the local might well take a position adverse to both plaintiffs and defendants, namely, that neither the imposition of trusteeship by the plaintiffs nor the transfer of funds to defendants had any validity, and that the local itself continued in possession of the funds and property as though nothing had occurred. The members who might desire to take this position could not be adequately represented by the plaintiffs, whose trusteeship depended upon the termination of the existence of the local, nor by the defendants, who must necessarily argue that the former local had ceased to exist. Concluding that the absent and indispensable parties were not adequately represented, the Court affirmed the granting of the motion to dismiss.

Subsequent cases in other jurisdictions have reached the identical result. . . Fitzgerald v. Haynes, C.A. 3, 241 F. 2d 417; Fitzgerald v. Santoianni, 95 F. Supp. 438 (D. Conn.); Fitzgerald v. Jaudreau, 16 F.R.D. 578 (S.D.N.Y.); Fitzgerald v. Kriss, 10 F.R.D. 51 (N.D. N.Y.)

B. Application of Legal Principles to This Case.

1. There can be no doubt that Local 118, BCW, is an indispensable party to this action. The rationale of Green v. Brophy, supra, is obviously and directly applicable.

Local 118, BCW, is undeniably a party to legal relationships which require adjudication in this action. The property at bar was at one time its property; and both appellant and appellees were asserting legal claims to that property. As shown above, appellees' claim appeared on the face of the complaint; appellant's statement to the contrary is error. Appellant here, as in the Green case, has no rights if his trusteeship over Local 118, BCW, was not rightfully established.

Likewise, neither appellant nor Local 118, BCW, has valid claims if the affiliation with ABC and the consequent transfer of funds were proper and lawful.

Contrary to appellant's assertions, he cannot represent Local 118, BCW. Appellant claims that "No such hostility of interest exists here, for the International Constitution explicitly provides for appellant's trusteeship on behalf of the local." (J.A. 28). There is no citation to the Constitutional provision to support that statement. There is no such Constitutional provision.

The Constitutional provisions clearly establish that a Special Trustee is acting on behalf of the International. The provision dealing with trusteeships is Art. XX, Sec. 4;(A.B., App. C, 48). The International's General Executive Board appoints the trustee. Subsection (a). The International's General Executive Board decides whether the trusteeship is to continue. Subsection (b). The functions of the local officers pass to the trustee, "subject to the direction and approval of the General Executive Board." Subsection (c). His appointment of officers is to be made "with the approval of the General Executive Board." Ibid. In administering the trusteeship, "He shall submit periodic and complete reports of his actions and of the affairs of the subordinate affiliate to the General Executive Board." Ibid, p. 49. The continuation of his trusteeship beyond one year may be voted by the General Executive Board. Subsection (e).

Moreover, the objectives the special trustee is to serve are hardly confined to the local. He may take such "action as he deems necessary for the preservation of the rights and interests of the members of the subordinate affiliates and of the International Union." Subsection (c) (emphasis added). The conjunctive of course makes a difference in kind. X plus Y necessarily equals something different from X alone -- unless, of course, Y is zero, and this entire case is irrefutable proof that the interest of the International in this matter is not a cipher.

In fact, it bears reiteration that appellant has made the admission in this Court that it is the International "whose property and affairs are at issue in this case and in whose behalf I brought this suit in the United States District Court for the District of Columbia." (A. B., App. B.) With his interests thus plainly hostile to those of the local, appellant can no more represent the local involved than could the appellant in Green v. Brophy.

2. Members of Local 118, BCW, as representatives of the different possible positions, are indispensable parties. This is required by Green v. Brophy which held that such membership representation as well as the joining of the local, was absolutely necessary to sustain the complaint.

It is as clear here as it was in that case that neither appellant nor appellees could adequately represent any members of Local 118, BCW, who might contend that both the trusteeship and the disaffiliation are invalid, and who wished to continue as self-governing members of Local 118, BCW.

Here, as in the Green case, upon the termination of the alleged trusteeship, this property is to be returned to the local as it then exists (Subsection (e); p. 49). Appellant under no circumstances can represent or act as trustee for those members who during the past decisive days in December, 1957, desired to retain BCW membership. They are not necessarily the beneficiaries of his trust.

Furthermore, the complaint contains no allegations whatever that the individual defendants are sued as representatives of the class of the former membership which desired to be affiliated with Local 118, BCW. In the absence of the allegation of any facts which would support the conclusion that the suit is directed against all such members as a class, see Knapp v. Bankers Securities Corporation, 19 F.R.D. 515 (E.D. Pa., 1956); 3 Moore's Federal Practice 3423-4 (2d Ed.), such members are indispensable parties who were not adequately represented before the

District Court. The duty of insuring that all indispensable parties were represented before the Court was appellant's; he cannot transfer it to appellees or to the Court. (Cf. A.B. 29).

3. The allegations of the complaint make evident that the funds, assets and property in question are being claimed by Local 118, ABC. There is and could be no allegation that any of the individual defendants have converted any of the funds or property involved to their own purely personal purposes. As noted above the complaint itself fully sets forth the legal basis put forward by appellees for their actions. Appellant's statements to the contrary are not correct. (A. B. 30, 31).

Further, the complaint brings into question the very use of the number "118" and the prospective rights of Local 118, ABC, to function in any way. With its own existence so unmistakably bound up with this litigation Local 118, ABC, is an indispensable party to this case, and its absence is fatal to the complaint.

4. Inasmuch as the complaint seeks to enjoin the enforcement of dues check-off provisions between Local 118, ABC, and any employer contracting with it, (J.A. 12), those employers are also parties involved in legal relationships upon which this Court is being called on to make a decision. They are more than mere stakeholders, (Cf. A.B. 32); but even if they were stakeholders only, "A stakeholder, holding possession of property, is an indispensable party in a suit to recover the property." 3 Moore's Federal Practice 2157. Accordingly, they also are indispensable parties to this litigation.

C. The Dismissal On This Ground Should Be Affirmed.

This dismissal for lack of indispensable parties was plainly within the power and discretion of the Court below, and should be affirmed. Appellant made no request whatever for leave to amend, although he was obviously under notice that the dismissal of his complaint for this reason was to be decided by the Court. He has no basis to complain that an opportunity he did not seek was not granted. (A. B. 32).

The Court may well have concluded that appellant could not possibly bring in the indispensable parties. As to Local 118, BCW, for example,

as we have seen above, the Court below properly concluded that the requisite seven members did not exist, so that this party could perhaps not be represented, under the circumstances of this case. That determination required dismissal, if the local was an indispensable party, as it clearly was. In the concluding words of Green v. Brophy, upon which appellant relies, (J. A. 32), the Court speculated that the indispensable parties might possibly be subject to service. The Court clearly intended that if appellant proved unable to serve them, the case was to be dismissed. It was not to be re-tried in the absence of indispensable parties.

"Unless the absence of an indispensable party can be and is cured by his joinder, dismissal must be granted . . . Of course, if indispensable parties are not and cannot be joined, the court should not proceed . . ." 3 Moore's Federal Practice 2152, 2205.

In any event, whether or not the Court was required under the circumstances to proceed as it did, it certainly had discretion to do so and should be sustained by this Court. Even where the status of the party is in doubt, and judgment as to whether or not he is an indispensable party has not yet been made, the District Court has discretion to dismiss; while it may proceed without such party, it "may also refuse to proceed without him, for discretion to proceed implies discretion not to do so." Heyward v. Public Housing Administration, 94 U. S. App. D. C. 5, 214 F. 2d 222, 225, affirming a dismissal. To the contention that "the District Court should have called in the absent defendant, not dismiss the cause of action," it is a complete answer that "adding or dropping parties to a cause is a matter within the discretion of the trial court, and will be reversed on appeal only when there has been a clear abuse of that discretion." United States v. Elfer, C. A. 9, 246 F. 2d 941, 946.

IV. THE DISMISSAL SHOULD BE AFFIRMED BECAUSE
THE COMPLAINT CANNOT BE HONORED UNDER
THE NATIONAL LABOR LAWS

In addition to the grounds already discussed, the District Court dismissed because "a labor dispute is involved." (J.A. 107). This judgment should be affirmed because relief integrally involved in the complaint was precluded by the labor relations policies and statutes of the United States.

This Court has firmly established the principle that a controversy between two unions as to the representation of particular employees constitutes a "labor dispute" within the meaning of the Norris-LaGuardia Act; and the Federal Courts are therefore precluded from granting any equitable relief. Green v. Obergfell, 73 U.S. App. D.C. 298, 121 F. 2d 46, cert. denied, 314 U.S. 637; Fur Workers Union Local No. 72 v. Fur Workers Union, 70 U.S. App. D.C. 122, 105 F. 2d 1, aff'd, 308 U.S. 306. This authority is scarcely affected by citations to District Court opinions in other Circuits. (A.B. 35).

This complaint proceeded on the basis of a single assumption of law -- that it is illegal for members of a union voluntarily to abandon their membership and to transfer their membership to another labor organization. Once a Special Trustee is appointed, the complaint assumes, the officers and members of the BCW Local involved may take no action whatever. They have been stripped of all rights and are completely at the mercy of the Special Trustee. Without such an assumption, appellant would not have sought an injunction prohibiting appellees "From representing to members of Local 118, to employers of such members, or to the public generally that said Local 118 is no longer an affiliate of the International". (J.A. 12). As a further example, the prayer that defendants be enjoined "From collecting or receiving dues from members of Local 118 . . ." in any way, ibid., is meaningless without the assumption that anyone who was a member of Local 118, BCW, when appellant was purportedly appointed "Special Trustee" of

that Local must remain, forever and ever, a member of that Local. The entire complaint rests on this assumption that a cause of action can be stated by reciting that individual union members have changed their membership.

This assumption, although clearly an integral and inseparable part of this complaint, is plainly and directly contrary to rights granted defendants and all other individual Americans by the Constitution and by the Labor Management Relations Act, 29 U.S.C. § 157. The right of the people to associate freely for their common objects is guaranteed by the Bill of Rights and has recently been reaffirmed by the Supreme Court. See, e.g., Watkins v. United States, 354 U.S. 178, 188. See also, e.g., NLRB v. Jones & Laughlin Corp., 301 U.S. 1, 33-34. The Labor-Management Relations Act guarantees to all employees involved in this suit "the right to self organization, to form, join or assist labor organizations" and "the right to refrain from any or all such activities." 29 U.S.C. § 157. This complaint thus seeks to contravene very fundamental and well-protected legal rights of American citizens.

Appellant's complaint demands that this Court declare that Local 118, BCW, remains indefinitely the collective bargaining representative of the employees who formerly belonged to that local union. This is evident from a general reading of the complaint as a whole. It is also specifically reflected in the prayers that the individual defendants be enjoined from representing to the employers of the past members of Local 118, BCW, that they are no longer affiliated with the BCW, and also that they be enjoined from enforcing any dues check-off provisions in collective bargaining contracts with any employers. (J.A. 12).

Such relief is beyond the power of this Court to grant for two reasons: the Labor Management Relations Act, 29 U.S.C. §§ 151 et. seq., has entrusted the resolution of issues over collective bargaining representation to the National Labor Relations Board and not to the Courts, in the first instance; and the Norris-LaGuardia Act, 29 U.S.C. §§ 101 et. seq., prohibits Federal Courts from granting equitable relief in labor disputes, including disputes over collective bargaining representation.

"Neither the National Labor Relations Act nor the Norris-LaGuardia Act expressly confers upon the Federal Courts power to determine what is the appropriate and lawfully selected bargaining unit for employees. And we think no such power is implied in the statutes mentioned. On the contrary it seems clear that by the National Labor Relations Act Congress intended to confer exclusive initial jurisdiction upon the Board to determine the appropriate and lawfully selected bargaining unit for employees, and intended to give to the Board alone appropriate machinery, to wit, election machinery, for making such determination. It is true that the Act does not in express terms make the certification power of the Board exclusive. But this nevertheless seems to us to be the plain intent of the Act ..." Fur Workers Union Local No. 72 v. Fur Workers Union, 70 U.S. App. D.C. 122, 105 F.2d 1, 12, aff'd, 308 U.S. 306. See also, Reilly v. Millis, 52 F. Supp. 172, 173 (D.C.D.C.), aff'd, 79 U.S. App. D.C. 171, 144 F.2d, 259, cert. denied, 325 U.S. 879; NLRB v. Harris-Woodson Co., C.A. 4, 179 F. 2d 720.

There are implications in the complaint that defendants have interfered with the freedom of individual employees. Such an allegation constitutes a charge of unfair labor practices under the Labor Management Relations Act. This subject matter is also exclusively with the primary jurisdiction of the National Labor Relations Board. United Electrical, R. & M. Wkrs. v. General Electric Co., 97 U.S. App. D.C. 306, 231 F.2d 259, 261, and cases cited therein.

V. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION
UPON WHICH RELIEF CAN BE GRANTED, IN THAT IT
SHOWS VIOLATION OF THE FUNDAMENTAL AND BASIC
TERMS AND CONDITIONS OF THE CONSTITUTION AND
COMPACT ON WHICH IT DEPENDS

The complaint in this case sought to obtain the property of Local 118, on the theory that the BCW Constitution authorized such action and that the local was bound to give up its property under that Constitution. But the complaint itself shows that the Constitution had been violated, in a manner so fundamental as to relieve appellant of any authority to demand the property and to discharge the local of any obligation to surrender it.

The central fact is that the AFL-CIO expelled BCW as corrupt. This appears on the face of the complaint. (J.A. 24, 27, from Exh. B to appellant's affidavit, J.A., 17, incorporated in the complaint, J.A., 7). In any event, this fact could not be denied. It is a fact of such notoriety that judicial notice could be taken of it. It appears on the record of this Court in another pending appeal, where a Division of the BCW raises issues as to the effects of the expulsion on NLRB proceedings. National Biscuit Division, etc. v. Boyd Leedom, et al., No. 14, 576.

The complaint makes very clear that appellees' position is that they are maintaining the property as union property for the benefit of the membership, and have only transferred affiliation from a corrupt union, expelled from the AFL-CIO, to a new, clean union, chartered by the AFL-CIO for this industry. (J.A., 21-22, 24-28.)

The legal consequences of these facts stated in the complaint itself are to be determined by reference to the BCW Constitution. This Constitution was incorporated in the complaint, (J.A., 2-3), and is attached to appellant's brief as Appendix C. The page references below are to the printed booklet thus before the Court.

On the very first page (Page 1, unnumbered), the BCW records, "Affiliated with the A. F. of L. since February 23, 1887. Affiliated with the AFL-CIO since December 5, 1955." The Court may take judicial notice that the latter date was the date of founding of the merged AFL-CIO. BCW President Cross was among those who hailed the merger. Crawford v. Newman, 175 N.Y.S.2d 903, 906-907 (Sup. Ct.).

"Alliance with other labor organizations in matters of common concern toward the end of mutual protection and organization" is specified as one of the BCW objectives. Pp. 3-4. Moreover, Article IX deals with the subject of "Delegates to the Conventions of the American Federation of Labor Congress of Industrial Organizations (AFL-CIO)." P. 21. The necessary presumption was that there would be such delegates, that BCW would maintain its affiliation with AFL-CIO, and certainly not permit itself to be expelled for corruption.

It should not be necessary to cite Constitutional provisions to support the thesis that there was a legal inhibition against corruption on the part of BCW and its officers. If reference to the BCW Constitution is in point, it requires that all "income derived by the International Union shall be applied for the general objectives of the International Union and all costs and expenses related thereto ..." P. 23. Those objectives are exclusively legitimate and honorable trade union objectives for the benefit of the membership, and in no way, either expressly or by implication, permits any BCW funds to be used for the personal enrichment or gratification of any BCW officer or member, or for any other corrupt purpose. P. 3.

AFL-CIO found BCW corrupt, according to the complaint, and expelled BCW for that reason. The corruption and the expulsion violated the letter as well as the spirit of the BCW Constitution. The corruption and the expulsion, according to the the complaint, was the reason for the appellees' actions effectuating disaffiliation from BCW and affiliation with ABC. The corruption and the expulsion, both of

which antedated the events on which the complaint was based, should be held as a matter of law to have terminated any rights which appellant might otherwise have asserted over the property of Local 118 and have extinguished any corresponding duties on the part of appellees.

Revealing the corruption and expulsion of BCW as they do, the allegations of the complaint surely support dismissal on the basis that "complainant comes with unclean hands", as the District Court held. (J.A. , 107.) This finding would justify the court in denying any relief, as indicated above.

Each of appellant's objections to the "unclean hands" decision is without merit. (A.B. 18 ff.)

A. As demonstrated above, it is not true that the Court below "went far beyond the allegations of the complaint." (A.B. , 18). The Court had to rule on the sufficiency of those allegations; and that was the subject briefed and argued by the parties. The failure of parties to adopt in their briefs and arguments the precise terminology which Courts subsequently utilize in their orders and opinions has never before been considered any indication of lack of due process. Nor is it any ground for disturbing a judgment of the District Court obviously right substantively.

B. Again, the assertion that "There was in fact no basis in the record for Judge Keech's holding", (A.B. , 19), evidently rests on a misreading of the complaint. Incidentally, McClosky's deposition, to which appellant makes reference at this point, has never been signed by him, as required by the Federal Rules. It seems improper for it to be included in the record of appeal and for reference to be made to it by appellant. As for McClosky's Affidavit, to the extent it may be material on this appeal, no shadow was cast on it by appellant's Motion to Strike. Appellant evidently assumes that the filing of a motion to strike forbids judicial consideration of the documentary portions involved prior to a formal ruling on the motion to strike. (A.B. , 16-17, 19.) This is unprecedented and strange doctrine. If the District Court

could have first denied the motion to strike and then based a finding of "unclean hands" on the affidavit, as appellant seems to imply at this point, the Court surely was free to consider the affidavit and dispose of the case, leaving the disposition of the motion to strike obvious and moot. Appellant's position seems to be that the Court should remand the case for a ruling on the motion to strike, or else must consider the case as though the motion had been granted. Such straining at gnats scarcely serves the interests of orderly and just appellate administration.

Appellant goes so far as to assert that the claim of "unclean hands" "was not related either to appellant or the union members who were his principals." (A.B., 19). The plain fact is that appellant bases his claim and authority entirely on the BCW Constitution and that the BCW is his principal.

Indeed, appellant admits his agency for the International, in the affidavit he prepared for this Court and attached to his Brief as Appendix B. There, appellant swears that it is the BCW, not any local, "whose property and affairs are at issue in this case and in whose behalf I brought this suit in the United States District Court for the District of Columbia." So be it. Then the unclean hands are precisely those of appellant's principal.

The unclean hands and corruption of BCW, for which appellant is acting and on which he is basing his claim, vitiate the entire action. Equity jurisdiction, when it attaches, of course embraces the entire litigation, regardless of the type of relief sought. (Cf. A.B., 19.)

The authority of many decisions supports the conclusion that a complaint for local union property should be dismissed when there has been an expulsion for cause from the parent labor federation, and accordingly a breach of the fundamental conditions and requirements of the union Constitution and compact sued on. These decisions were made in cases involving other schism situations, as well as in other cases involving former BCW locals which are now affiliated with ABC.

The cases not involving the Bakers include: Local 1140 v. U. E., 45 N. W. 2d 408 (Minn.); Duris v. Iozzi, 6 N. J. Super. 530, 70 A. 2d 793; Clark v. Fitzgerald, 93 N.Y.S. 2d 768 (Sup. Ct.); Bozeman v. Fitzmaurice, 107 N.E. 2d 627 (Ohio App.).

So far as the Bakers are concerned, this case is only one of a series of virtually identical suits. While the cases are naturally not absolutely identical in substance or procedure, arising as they do in different jurisdictions, they appear in essential agreement in result and reasoning.

In the case involving two New York City locals, a preliminary injunction was denied, Crawford v. Newman, 174 N.Y.S. 2d 667 (Sup. Ct.), aff'd, sub nom. Crawford v. Ehrlich, 174 N.Y.S. 2d 881 (App. Div.); and a trial was held, resulting in judgment for defendants. Crawford v. Newman, 175 N.Y.S. 2d 903 (Sup. Ct.). The Court held, inter alia:

"It is unconscionable to hold that, because a written contract does not expressly so provide, that a contracting party may not, without breaching the contract, disaffiliate from a corrupt and dishonest association. This is especially so when there is at stake the welfare of thousands of members of a union, together with the public confidence so essential to maintain peaceful and friendly relations with businessmen, big and small. ...

"A violation of the trust so reposed in labor leaders is in and of itself sufficient justification for a local union to call it quits. This is precisely what motivated the two local unions to disaffiliate from the International, and the result amply justifies their action. Had the locals disaffiliated for caprice or some internecine dispute it would have been another story.

"The reasons and motivations underlying the disaffiliation of defendant locals parallel the causes for the ouster of the International from AFL-CIO. Considering that the International was booted out of the AFL-CIO on charges of unethical practices by corrupt elements in control of its affairs, and considering the decided effect the ouster could have on the prestige of the locals, its membership and on the public as well, it cannot be said that defendants' contention that plaintiffs came into court with 'unclean hands' is without merit." 175 N.Y.S. 2d at 907-908.

In the case involving a Chicago local, judgment was rendered for the defendants on the pleadings. Olson v. Carbonara, 41 LRRM 2637 (Ill. Sup'r. Ct.). The Court relied primarily on the "frustration" doctrine, id. at 2738. The Court cited the dismissal in this case as authority. Ibid.

Motions for preliminary injunctions were denied in the following cases: Stott v. Zellman, 41 LRRM 2749 (Ill. Cir. Ct.); King v. American Bakery Workers Union, 41 LRRM 2617 (Calif. Sup'r. Ct.); Kralstein v. Sorchinski, 41 LRRM 2528 (N. J. Sup'r. Ct.). While the various other points discussed in this Brief received generally favorable discussion and holdings in these cases, the Courts evidently relied primarily on an "unclean hands" - "frustration" ground similar to that argued under this heading of the Brief. In the King case, for example, the Court held, "There is considerable substance to this argument and to the resulting claim of the defendants that there had been a fundamental breach of that contract by reason of the fact that the International union has so conducted itself as to cause itself to be expelled from the A.F.L.-C.I.O. There are numerous decisions that would support this contention and so justify the local union in maintaining that its contract with the International was at an end. They also justify the contention that by reason of the breach of the contract on the part of the International, no rights can arise from that contract to be exercised by the International, and there would be no corresponding duties or obligations on the part of the local arising from that contract." 41 LRRM at 2618.

The Courts have apparently been uniform in failing to perceive any basis for the granting of the relief prayed for in the complaint. The decision below was, therefore, in accordance with the law as well as the governing circumstances of this case.

CONCLUSION

For each and all of the reasons stated in the foregoing the District Court properly dismissed the complaint in this action; and the judgment should be affirmed.

Respectfully submitted,

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REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 14,443

FILED SEP 30 1958

Joseph W. Stewart
CLERK

PETER H. OLSON,
as Special Trustee of Local 118,
Bakery and Confectionery Workers' International Union of America,
and as Acting Secretary-Treasurer of the
Bakery and Confectionery Workers' International Union of America,
Appellant,

v.

CHARLES MILLER, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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REPLY BRIEF FOR APPELLANT

Appellant replies to the Brief for Appellees Miller et al (cited hereafter "Br.") and also, to the Brief for appellee The Second National Bank of Washington (infra p. 10).

A. REPLY TO BRIEF FOR APPELLEES MILLER ET AL

At the outset it is well to consider the general position taken by appellees in this case. The complaint alleges that these appellees have misappropriated to their own use property which belonged to Local 118 or, if the local was defunct, then to its parent the International Union. Appellees assert defenses to appellant's suit to recover the property, including the defense that Local 118 validly disaffiliated from the International, although it is undisputed in this appeal that appellees took the property before any disaffiliation was ever attempted. Under any view of the case, however, there are disputed issues of fact which ought to be resolved by a trial. Yet appellees desperately seek to avoid a trial and thus to put their acts beyond any judicial scrutiny. Speaking of one of the disputed fact issues they say (Br. 10), "There are no grays in the issue; it is either black or white." But of course there is an issue: one party says "black" and the other says "white", and the proper method of deciding who is right is to try the matter out on actual evidence. Because they find that method abhorrent appellees are led into a series of factual distortions and of consequently misdirected arguments in an attempt to preclude a trial.

We shall not answer every one of these misstatements. Some of them were anticipated in the Brief for Appellant; others seem too obvious to require discussion. As briefly as possible, section by section of appellees' brief, we shall discuss those which are most important and those which are made for the first time in this court.

Reply To Part I of Appellees' Brief (pp. 9-13)

1. The issue which appellees raised by their motion to dismiss in the court below concerned appellant's standing to bring this suit, as of January 4, 1958, when the complaint was filed, as Special Trustee of a then-existing Local 118. Paragraph 12 of the complaint (J. A. 4) speaks in the present tense because it alleges such standing. It does not, as

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appellees contend (Br. 10, 11),¹ refer to the entirely substantive question of the validity of the attempted disaffiliation 13 days earlier, on December 21, 1957. Paragraphs 9 and 11 of the complaint (J. A. 4) deal with the latter issue, alleging that the action of December 21, 1957 was invalid because it violated the 7-loyal-member provision in Article XIV, Section 22 of the International Constitution. It is too late for appellees to seek to change the issues on appeal. Judge Keech did not even pass upon the validity of the attempted affiliation.

2. Actually both questions were disputed and both are factual in nature. Therefore, they could only be resolved after trial. Nor is it true that appellant had "adequate opportunity to present evidence on this issue" (Br. 11), handicapped as he was by lack of time and by appellees' seizure of Local 118's records. He had no opportunity to present evidence as such (as opposed to unsworn written communications) and hardly more chance to secure such evidence. Even appellees merely venture without personal knowledge that appellant "apparently" (Br. 11) solicited every member of the local, but their views cannot be substituted for actual evidence on the question. Appellant emphatically believes he did not solicit every member, even by the unsatisfactory means available to him, although he did find some dissidents from the attempted disaffiliation nonetheless.

In view of the foregoing it is hard to see how a disaffiliation "action" ratified by, at best, 700 out of 1100 members can be described as "unanimous" (Br. 12). But in any event, the question at this juncture is not the proof which may ultimately be submitted to support the complaint, but rather the sufficiency of the complaint itself. See Darnell v. Markwood, 95 U.S. App. D. C. 111, 220 F.2d 274.

¹ Even if they were correct in this every applicable rule of pleading would treat such a minor discrepancy as non-fatal: Pleadings are to be construed so as to do substantial justice (Rule 8(f), F.R.C.P.); on a motion to dismiss, the allegations of the complaint are to be construed in favor of the pleader (Callaway v. Hamilton Nat. Bank, 90 U.S. App. D. C. 228, 195 F.2d 556); leave to amend, both before and at trial, is to be freely given (Rule 15 (a), (b), F.R.C.P.); capacity to sue need not even be alleged (Rule 9(a), F.R.C.P.).

3. Belatedly appellees also raise the defense that they did not receive prompt notice of appellant's trusteeship from the International President. (Br. 12, 13). But in fact they received such notice by telegram the very "same date" appellant was appointed. See J. A. 23, par. 21. Moreover, when the time and place of the trusteeship hearing were communicated to them on December 20, 1957, they waited a full 11 days to reply that they would not attend the hearing--for reasons having nothing to do with time (see J. A. 49, 50). Here, as elsewhere, they refused to avail themselves of intra-union remedies which they were required to exhaust.

Reply To Part II Of Appellees' Brief (pp. 13-15)

Appellees raise a number of highly technical objections to appellant's alternative standing as International Secretary-Treasurer. Every point they make was previously anticipated and shown to be without the least merit. See Brief for Appellant pp. 24-26.

It is significant that in Crawford v. Newman (Sup. Ct. N. Y. Cty.), 174 N. Y. S. 2d 903, 908, pending on appeal, a case cited by appellees themselves (Br. 30), similar objections to the standing of plaintiffs as International Secretary-Treasurer and special trustees of the locals there involved were also made, and they were rejected by the court.

Reply to Part III Of Appellees' Brief (pp. 16-22)

1. Appellees simply do not meet appellant's point that any lack of indispensable parties could have been cured had Judge Keech specified the parties to be added. All of the absent parties suggested by appellees were either resident, doing business, or to be found within the District of Columbia.² There is no basis whatever for the notion that Judge Keech

² In Green v. Brophy, 71 App. D. C. 299, 305, 110 F.2d 539, 545, the missing parties were non-resident, but the Court permitted plaintiff to attempt service by publication. Here too there is a local res authorizing such service. In Heyward v. Public Housing Administration, 94 U. S. App. D. C. 5, 214 F.2d 222, (cited Br. 22) even service by publication was not possible and therefore the Court, mindful of Rule 19(b), F.R.C.P., directed that the dismissal be without prejudice to re-bringing the action. In the "Fitzgerald" cases cited on page 18 of appellees brief, the facts and relevant contractual provisions were different, but even more to the point the joining of the absent parties would have deprived the District Courts of diversity jurisdiction. That is not true here, of course.

"may have" concluded that appellant "could possibly not bring in" the missing parties (Br. 21). If he had so concluded, it would have been his duty to say so; and he would have been wrong as a matter of demonstrable fact. In truth he did not even consider the possibility.

Appellees say that appellant cannot complain of this because he did not seek to amend his complaint (Br. 21). But he was not required to amend unless and until the District Court held that the complaint was defective; he could not do so before he knew what parties had to be added. He still does not know. In Green v. Brophy, 71 App. D. C. at 305, 110 F.2d at 545, this court allowed such amendment after affirming the dismissal on appeal. However, even after the hearing below, amendment would not have obviated dismissal on the other grounds cited by Judge Keech. This entire idea is an ill-conceived afterthought by appellees.

2. In arguing that "Local 118, ABC" is an indispensable party, appellees refer (Br. 21) to their own broad-gauged motives in misappropriating union property.³ Those are at best matters of defense, clearly not relevant in deciding appellees' own motion to dismiss. The complaint is concerned with the misappropriation itself and that was done by appellees, not others. The seized property was in their control when suit was filed. Moreover, appellees still do not claim that they inadequately represent their adherents in "Local 118, ABC." Unlike the defendant in Green v. Brophy they are members of the same union and not mere third-party custodians with hostile interests.

³ They earnestly contend that all these motives are incorporated in the complaint by virtue of appellant's original affidavit (Br. 2, 3, 21; see J. A. 7). Appellant does not debate the status of the affidavit because it is immaterial. Of course, by the language of paragraph 20 of the complaint (J. A. 7) he merely intended to incorporate that part of the affidavit referring to the responses of certain depository banks to demands that they turn over to appellant Local 118's funds. Certainly in describing the sample resolutions used by appellees in their purported disaffiliation meeting appellant did not adopt those resolutions as his own.

3. Nor do appellees suggest how the addition of Local 118 (BCW) would be more than a redundancy. Whether or not the local sued in its own name, appellant would be equally responsible as Special Trustee for seeing that its interests were fully represented in this case. His accountability to the General Executive Board⁴ is to insure that he properly discharges that responsibility. Similar provisions occur in virtually every international union constitution precisely because trusteeships frequently arise (as here) out of the defalcations of the local officership. Article XX, Section 4(d) of the Constitution provides that a trustee "shall institute all necessary action to recover money and other properties of the subordinate affiliate." Under that provision appellant brought this suit in behalf of Local 118. In a prior suit under an identical provision of this same International's earlier constitution, (Schnitzler v. Scida, 27 L. R. R. M. 2288), the United States District Court for the Eastern District of New York fully answered the same objection that members of the local must be joined (p. 2290).

"Bacon is the Special Trustee of the members of Local 550, represents them and is suing in that representative capacity. The rules of the International which Local 550 assented to and agreed to abide by, give him authority to commence this lawsuit in such a representative capacity. It is unthinkable that hundreds of members of Local 550 should be added as plaintiffs for under Rule 23 of the Federal Rules of Civil Procedure the plaintiff was empowered to commence this action just as he did. . . .

The Court added that, "Any recovery made in this action by plaintiffs is necessarily for the benefit of all the members of Local 550." (Ibid.) Obviously that is true here also.

⁴

Appellees make much of the provisions insuring such accountability and also of certain wording in appellant's affidavit printed as Appendix B to his prior brief (appellees Br. 19, 20, 29). The affidavit was submitted solely in connection with appellant's standing as International Secretary-Treasurer and has nothing to do with his trusteeship of Local 118.

Reply To Part IV Of Appellees' Brief (pp. 23-25)

1. This case concerns the misappropriation of property which happened to be owned by a Union--nothing else. It does not involve the representation of employees (Br. 23); nor their right to change their union membership (ibid.); nor allegations that appellees had interfered with employee freedom (Br. 25). Nowhere in the complaint can such issues be discerned. These are purely verbal concoctions of appellees, seemingly meant to becloud the simple issue of whether they may abscond with the property of another. Their right to leave the union is indisputable. They cannot raid its treasury as they leave, however.

2. Because appellees' authorities (Br. 23-25) are hinged to these distortions of the issues, those authorities are inapposite here. But see Williams v. Ferguson, ___ La. ___, 104 So.2d 267, upholding a similar suit by Local 369 of this International to enjoin certain ABC adherents from using the local's name and identifying number. The Louisiana appellate court there held that such a suit did not involve a "labor dispute" and did not encroach upon NLRB jurisdiction.

Reply To Part V Of Appellees' Brief (pp. 26-31)

1. In addition to "unclean hands" appellees now seek to adduce as a new ground for dismissal the violation of the "fundamental and basic terms and conditions" of the International Constitution (Br. 26, caption). This "frustration of contract" defense, like "unclean hands", was not raised in the court below as a ground for dismissal, but merely as a ground for denying appellant a preliminary injunction. See R. 104-107, Defts.' Opp. to Mot. for Prelim. Inj., pp. 1-4. Judge Keech did not even consider the question, much less the related matter of appellees' failure to avail themselves of proffered intra-union remedies.⁶

⁶ Among these remedies was the already-announced Special Convention of the International Union held March 3 to 5, 1958. See J.A. 70-80; Brief for Appellant, pp. B-1, B-2.

2. Indeed Judge Keech could not have decided the question because, like the "unclean hands" issue, its resolution necessarily depended upon facts which were disputed and which were not even properly before the Court. Appellees seem to insist that, unlike the very cases they cite (Br. 30, 31),⁷ their own private views on these matters should be taken as proof on these matters and that the expulsion action of the A. F. L. - C. I. O. should be substituted for judicial findings. Thus they set out (Br. 26-28) their own notions of what are the "essential" conditions in the International Constitution. However "frustration of contract" refers to the frustration of an object or effect which is "so completely the basis of the contract that, as both parties know, without it the contract would have little meaning." Restatement of Contracts (A. L. I.), Section 288, Comment, emphasis supplied. No one party to the contract can decide which conditions or objects fit that description. Ibid; see also Edwards v. Leopoldi, 20 N. J. Sup. 43, 89 A.2d 264, cert. den. 10 N. J. 347, 91 A.2d 671. Obviously in case of a dispute involving valuable property rights, a court must decide on the basis of all the evidence.⁸ There is no basis in the present record for such a decision.

⁷ The authorities cited by appellees at pages 30 and 31 of their brief do not support them in this position. With one exception those cases either involved judgments after trial or on conceded facts, or else denials of temporary injunctions, where a court may properly reach a preliminary determination on the basis of affidavits and attached exhibits. The single exception is Olson v. Carbonara (Ill. Sup'r. Ct., Cook Cty.), 41 L. R. R. M. 2637, pending on appeal, where at least the "frustration" defense was asserted by defendants as ground for judgment on the pleadings; in the present case it was not even urged by appellees as a ground for dismissal. However, the Carbonara decision suffers from the same defects as appellees' contention here; the "frustration" issue simply was not ripe for decision on the record before the court. Of course, if it were ripe here, appellant would contend that the doctrine is meritless; in any event, the doctrine is not applicable here; nor, if applied, would it be fatal to this suit. See, e. g., text and footnote 8, below.

⁸ If decision had to be made on the fragmentary record now available, appellant submits it would go against appellees. Both the International and Local 118 were in existence before the A. F. L. was formed (J. A. 95). The International Constitution in its Declaration of Principles, Preamble, and in Article I, Section 2 states quite different principles from those asserted by appellees. The importance of clean unionism is not disputed; in fact, appellant strongly disputes the assertion that the International or its officers and members are not "clean." But appellees' feelings about that principle or about A. F. L. - C. I. O. affiliation cannot be substituted for the common principles agreed to by 150,000 workers and stated in the International Constitution. See Brief for Appellant, App. C, pp. 2-4.

3. Similar considerations, including its inapplicability to a suit by Local 118, also apply to the defense of "unclean hands." Here too ex parte views, however righteous, cannot be made to pass for evidence, particularly since the issue involves the right to property. In Fitzgerald v. Abramson (S. D. N. Y.), 89 F. Supp. 504, defendants similarly sought to defend their seizure of union property with the contention that the victimized union was "communist dominated." Judge Rifkind answered (p. 512):

"Whether it is so dominated has not yet been judicially determined. It suffices to say that plaintiff does not suggest and defendants do not contend that any individual is, by the constitution of UE, constrained to continue his membership therein. Behind this dispute may lurk ideological differences of great consequence. The dispute itself, however, relates to property rights, and, of course, this Court is not authorized in resolving such a dispute to apply one rule of law for communists and another for anti-communists." (Emphasis supplied.)

4. In the light of the foregoing, it is untrue and even disingenuous to suggest that these defenses were before the District Court in its consideration of the motion to dismiss the complaint. (See Br. 28). Appellees did not believe so themselves. They did not cite the defenses in support of the motion; the complaint did not put them in issue (see footnote 3, *supra*); they were not argued; and there was no evidentiary basis for deciding them.

In the latter connection appellees suggest that Judge Keech could have relied upon the challenged McClosky affidavit and thereafter treated the motion to strike the affidavit as moot (Br. 28, 29). First, for reasons previously noted, he could not have properly relied on the affidavit. It largely consisted of invective and it failed to comply with Rule 56(e), F. R. C. P. See Brief for Appellant, p. 19. Second, a moot question is one whose decision cannot "have any practical legal effect upon a then existing controversy." (Burrell v. Martin, 98 U. S. App. D. C. 33, 37, 38, 232 F. 2d 33, 37, 38, footnote 10). The validity of an affidavit relied upon to render final judgment hardly fits that description. If the affidavit was

relied upon, a well-taken challenge to its reliability took precedence. Appellees cannot have it both ways.

B. REPLY TO APPELLEE SECOND NATIONAL BANK

The Bank's own brief clearly shows the propriety of retaining it as a party. It holds disputed money of Local 118 in one of its accounts. Moreover the account remains open for future use by appellees should they decide to redeposit in the Bank the larger funds which they previously withdrew. Nor is the Bank entitled to the award of an attorney's fee in any event, since the suit was properly brought and the District Court evidently would have retained the bank as a party had it not granted the individual appellees' motion to dismiss the entire complaint (see the Bank's brief, p.3). Even where a victorious plaintiff seeks such a fee as part of his damages, there must be a showing of malice, gross negligence, fraud, or the like. See Schlein v. Smith, 82 U.S. App. D. C. 42, 160 F.2d 22.

CONCLUSION

The order of the District Court should be reversed and the case remanded for trial on the merits.

Respectfully submitted,

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**BRIEF FOR APPELLEE,
THE SECOND NATIONAL BANK OF WASHINGTON**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

112

PETER H. OLSON, as Special Trustee of Local 118, Bakery
and Confectionery Workers' International Union of
America, and as Acting Secretary-Treasurer of the
Bakery and Confectionery Workers' International
Union of America, *Appellant*,

v.

CHARLES MILLER, ET AL., *Appellees*.

**Appeal From the United States District Court for the
District of Columbia**

United States Court of Appeals

*For the
District of Columbia Circuit*

FILED SEP 11 1958

Joseph W. Stewart

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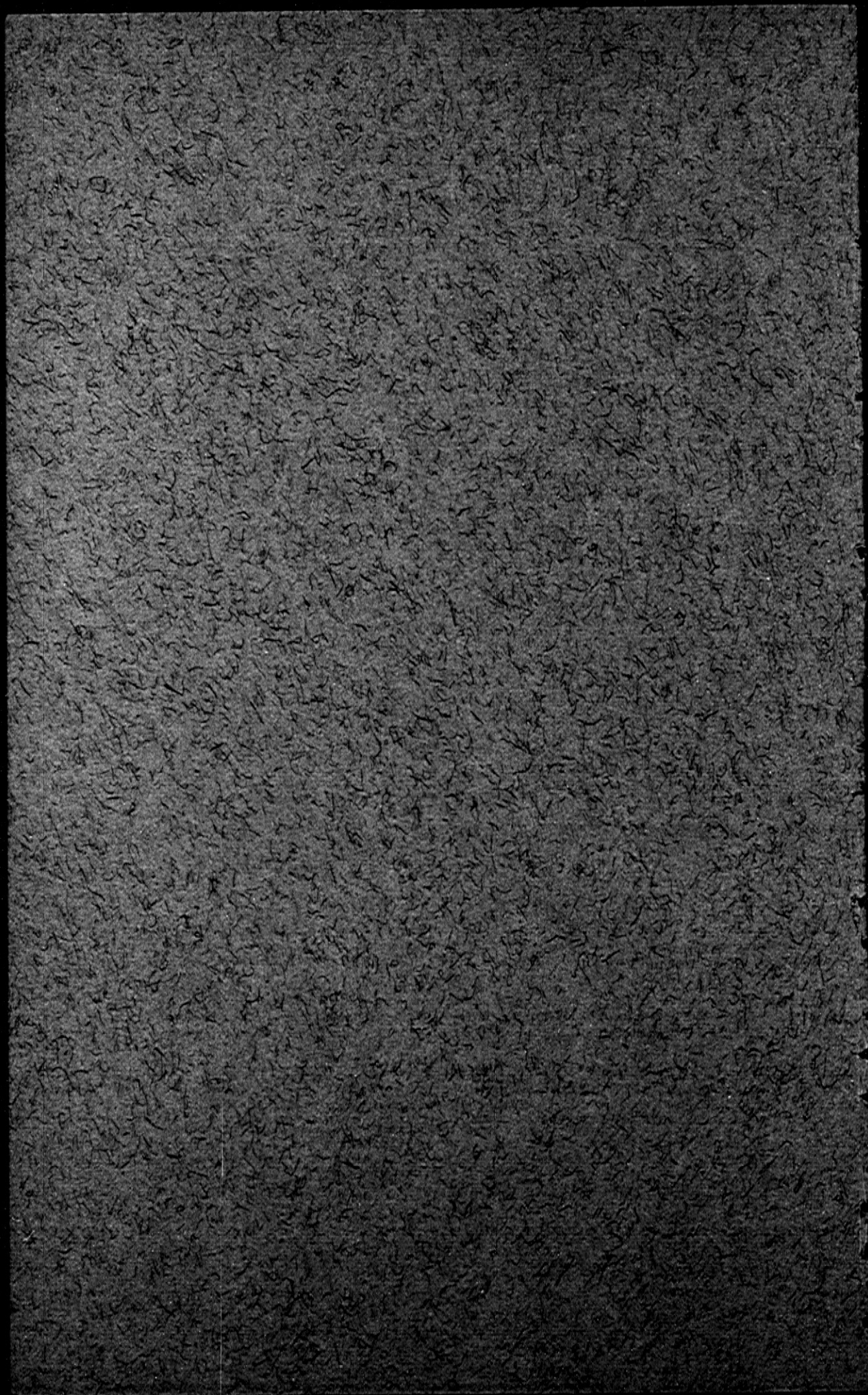
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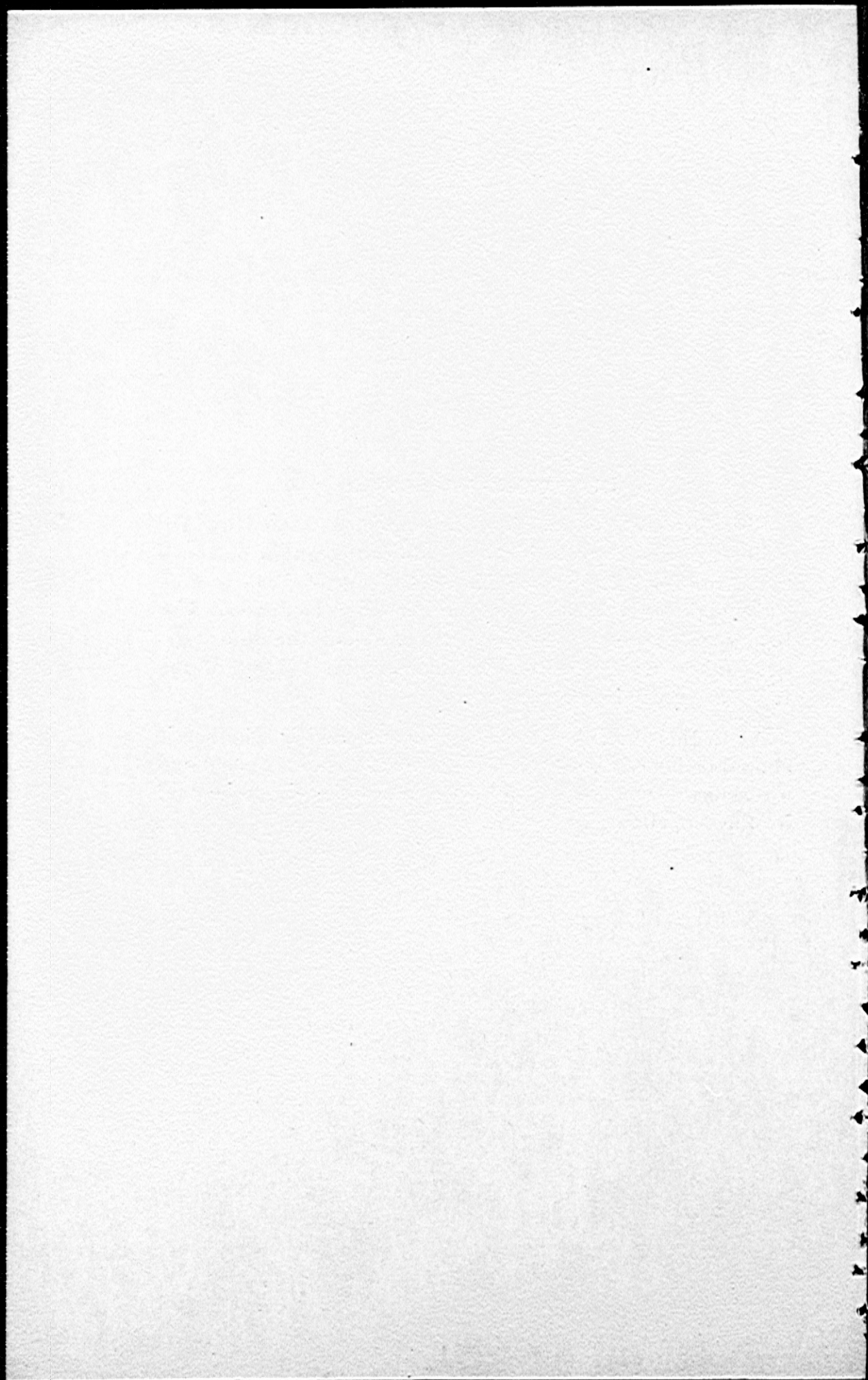
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QUESTIONS PRESENTED

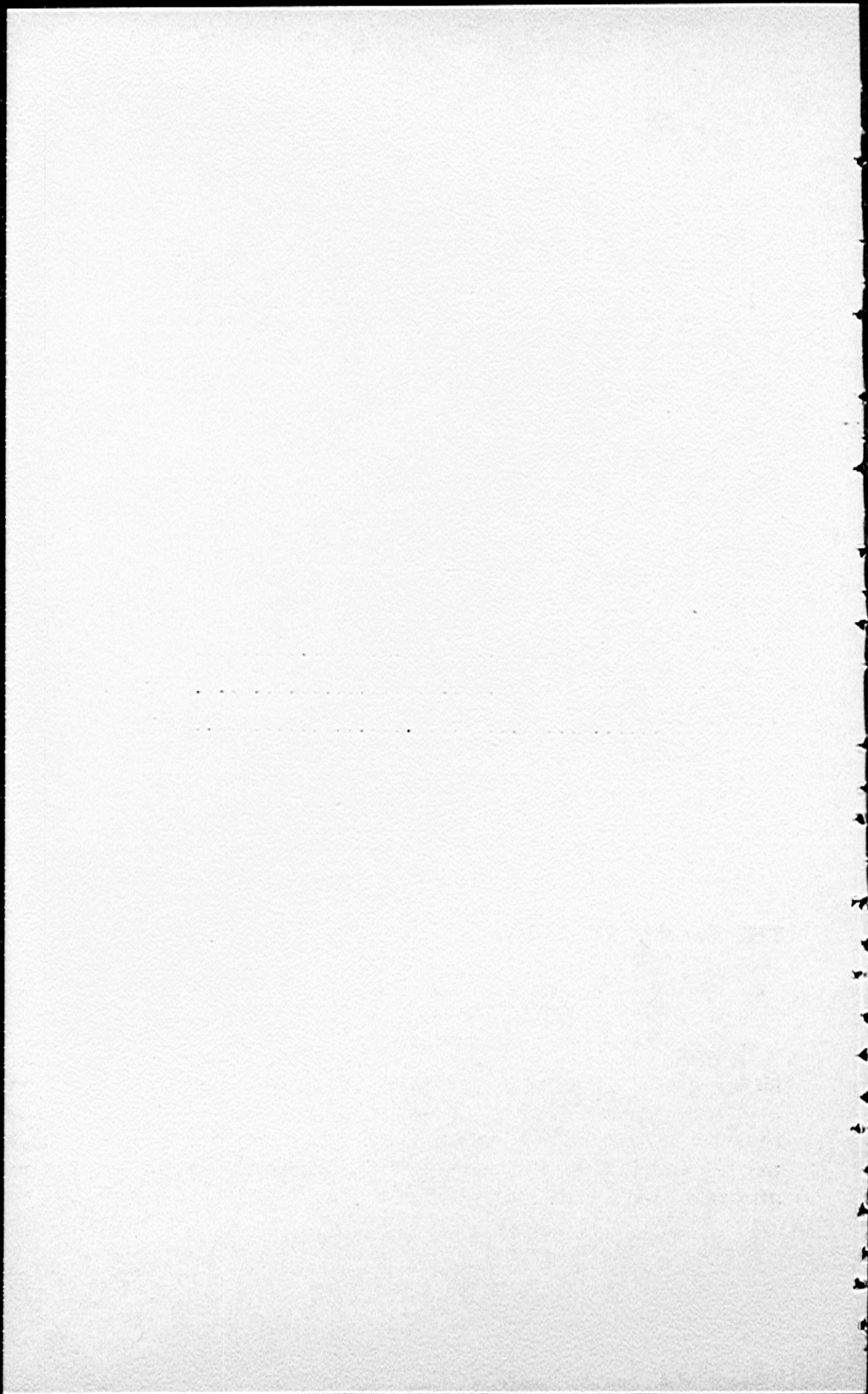
Significantly, the questions presented, as stated by Appellant, preliminary to his brief, do not mention or touch this Appellee, The Second National Bank of Washington. This Appellee sought in the Court below to be dismissed as having no interest in the controversy among the other parties and being the holder of a mere dollar (\$1.00) of the funds allegedly in controversy.

As to this Appellee, the question was and is whether it should be hence dismissed, with award to it of its costs and a reasonable attorneys' fee for its counsel herein, to be paid by the Appellant.



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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

PETER H. OLSON, as Special Trustee of Local 118, Bakery and Confectionery Workers' International Union of America, and as Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America, *Appellant*,

v.

CHARLES MILLER, ET AL., *Appellees*.

Appeal From the United States District Court for the
District of Columbia

BRIEF FOR APPELLEE.
THE SECOND NATIONAL BANK OF WASHINGTON

STATEMENT OF POINTS

The Court below erred in denying (without hearing argument) this Appellee's Motion to Dismiss the Complaint as to it based on the ground that it was a mere One Dollar Stakeholder without interest in the controversy among the parties, and that it be awarded its costs and a reasonable attorneys' fee for its counsel.

SUMMARY OF ARGUMENT

This Appellee was and is a mere stakeholder of a balance of One Dollar (\$1.00) in a checking account, which account the Appellant sought to tie up by making this Appellee a party to this litigation, apparently thinking that there were substantial funds involved herein then in this Appellee's hands. This Appellee-Bank accordingly sought dismissal from this litigation in the Court below, but that was denied; and it has necessarily participated in all of the proceedings and is necessarily participating on this appeal, all involuntarily and unnecessarily and to its substantial cost and expense; and it now again requests that it be awarded its costs and reasonable counsel fee and be hence dismissed.

ARGUMENT

The Second National Bank of Washington, one of the Appellees herein, having read and considered the Appellant's Brief and the Joint Appendix heretofore filed herein, respectfully presents:

1. The said Bank was and is, of record, a stakeholder only. This controversy involves as to it a deposit of funds in a savings account, upon which, in regular course of business and without notice of this litigation, it had honored on December 18, 1957, a withdrawal order, duly executed according to its records, against that account in the sum of Two Thousand Nine Hundred Ninety-Nine Dollars (\$2,999.00), leaving a balance therein of One Dollar (\$1.00).

2. Appellant filed the Complaint herein on January 4, 1958, and this Appellee was served with Summons and a copy of the Complaint on January 7, 1958.

3. On January 14, 1958, it filed herein its Answer to the above effect to Appellant's Motions for Temporary Restraining Order and Preliminary Injunction (Jt. App. 29-40), disclaiming any interest in this controversy and stating

that it was without knowledge or information sufficient to form a belief as to any other assets in controversy.

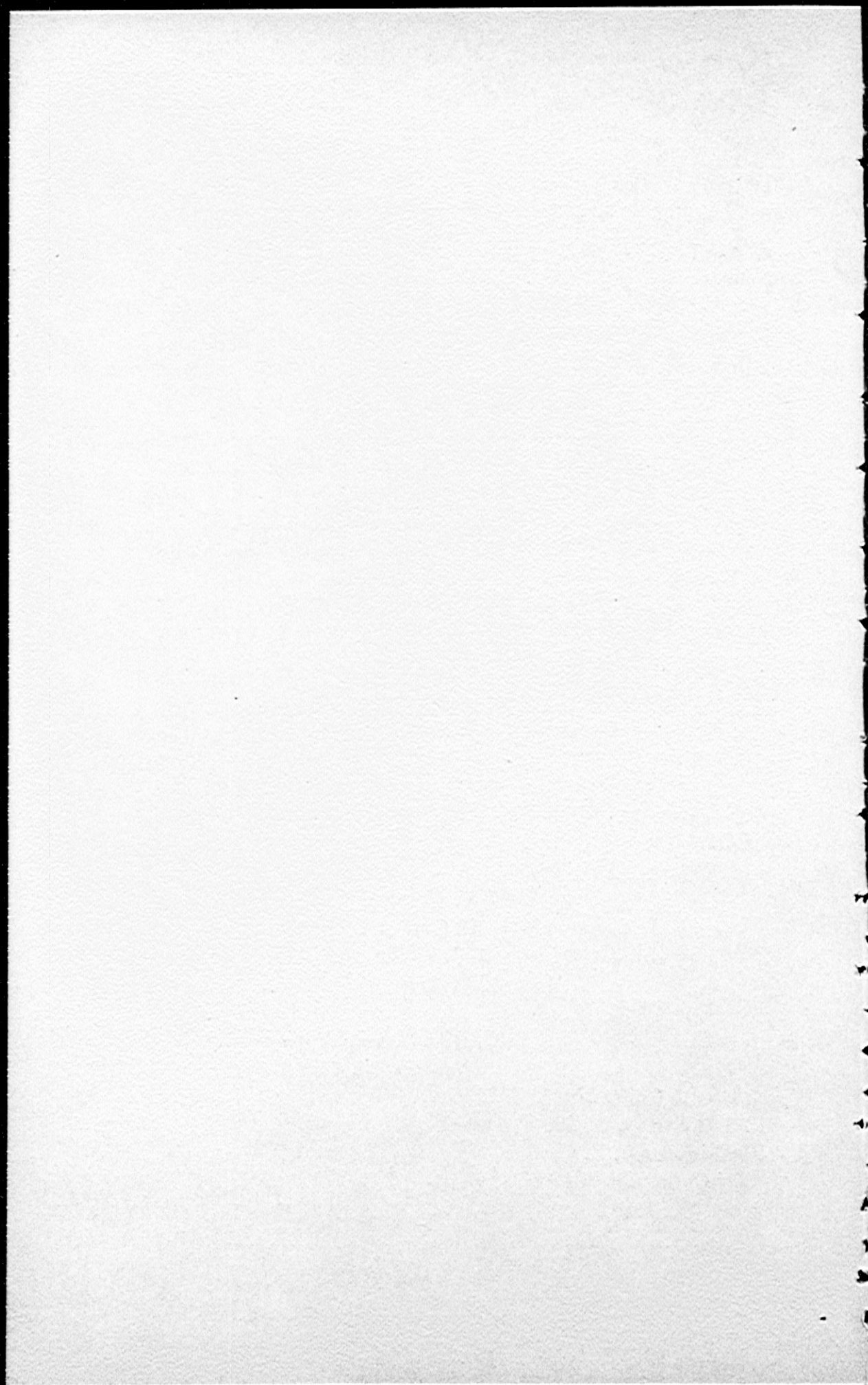
4. On January 22, 1958, it filed herein its Motion to Dismiss as to it for the foregoing reasons the Complaint herein and, further, tendering payment of the One Dollar (\$1.00) sole balance of funds here involved which it then held and asking the Court to order its disposition.

5. Thereafter, there were filed herein by others, and argued, motions as a result of which there was entered herein by the Trial Court an Order dismissing the Complaint herein and, incident thereto, denying all other motions theretofore filed herein. In that connection, the Trial Court observed that it would retain as a party herein the said Bank, in the event of need as to ultimate disposition of the funds in its hands involved. (The Trial Court did not hear argument on this Appellee's Motion to Dismiss.)

6. The said Bank respectfully requests that disposition of the One Dollar (\$1.00) balance in its hands, plus interest credited by it to that account (amounting to \$22.50 at the time of filing of this brief), be ordered by the Court and that it be hence dismissed, with award to it of its costs and a reasonable attorneys' fee for its counsel, to be paid by Appellant.

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FILED FEB 27 1959

IN THE *Joseph W. Stewart*
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

PETER H. OLSON, as Special Trustee of Local 118, Bakery and Confectionery Workers' International Union of America, and as Acting Secretary-Treasurer of the Bakery and Confectionery Workers' International Union of America, *Appellant*,

v.

CHARLES MILLER, et al., *Appellees*.

**APPELLANT'S PETITION FOR REHEARING OR FOR
CLARIFICATION OF OPINION**

Appellant petitions the Court for rehearing, or alternatively for clarification of its February 12, 1959, opinion, with respect to certain specific issues.

I. As to Joinder of Local 118 BCW as a Party

Appellant is the duly designated Special Trustee of Local 118 BCW pursuant to Article XX, Section 4 of the BCW International Constitution and he brought this suit primarily in that capacity. See Brief for Appellant, pp. 26, 29, Note 13. Nonetheless the Court's opinion holds that "he represents the International's interests" (page 4), and that Local 118 BCW itself is an indispensable party to the action—one which "must be represented independently" (pages 4-5). Appellant recognizes that the local

may be joined in its own name, (*Busby v. Electric Utilities Employees Union*, 79 U.S. App. D.C. 336, 147 F. 2d 865), and that the proper alignment of the parties is a question for the trial court in the first instance. See 2 *Moore's Federal Practice* (2nd ed.), section 19.03. However, the Court's ruling inevitably raises other questions as to which appellant is in doubt. The questions arise because Local 118 BCW is in trusteeship and because the individual appellees, its former officers, have taken all its cash and other assets.

(a) Under Article XX, Section 4 of the BCW Constitution, the International-designated Special Trustee is vested with all the powers and duties of officership of the local. Only he can accept service of process, or authorize others to do so; only he can authorize the expenditure of money for litigation; only he can retain counsel and exercise immediate control over the conduct of litigation for the local. While a new trustee could be appointed for the local, he too would derive his authority from the International, as fully as appellant does now, and any defect in appellant's representation of the local would merely be transferred to his successor as Special Trustee.

(b) Inasmuch as Local 118 BCW presently has no funds other than those seized by appellees, if it is required to retain separate counsel it will also have to receive financial assistance from the International.

The questions which emerge from these circumstances are of an immediate and practical nature:

(1) Whom is appellant to serve with process in order to secure the joinder of Local 118 BCW as a party?

(2) May the local receive any assistance, financial or otherwise from the International BCW in connection with its participation in the case? If not, what arrangements are to be made to direct the local's participation and to defray its costs?

(3) Is it sufficient if the local merely appears separately in the action as a formal party, or is it required to retain separate counsel?

Appellant respectfully requests clarification of the Court's opinion in the light of these questions.

**II. As to the Status of Appellee Second National Bank
of Washington**

The Court, without qualification, vacated the District Court's order dismissing the complaint and thus apparently reinstated the complaint as to all appellees. However, on page 5 of its opinion the Court also affirmed the denial of costs to Appellee Second National Bank in connection with the dismissal of the complaint as to that Bank. Seemingly that implies affirmance of the dismissal as to the Bank, albeit without the award of costs; for if the complaint is reinstated as to the Bank the entire question of costs is moot. Thus, the Bank's present status in the case is uncertain.

Conclusion

Appellant respectfully submits that these two aspects of the Court's opinion require clarification to insure orderly and proper procedure upon remand of the case to the trial court.

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Attorneys for Appellant

CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition is presented in good faith and not for delay.

ABRAHAM J. HARRIS

JOHN V. LONG

JAMES H. HELLER

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 1959, I served the foregoing Appellant's Petition for Rehearing and Certificates of Counsel by mailing, postage prepaid, a copy thereof to each of the following counsel for appellees: Edwin Shelton, Esq., 1511 K St., N.W., Washington 5, D. C.; Chapin B. Bauman, Esq., 600 F St., N.W., Washington 4, D. C.; William F. Kelly, Esq., 900 Investment Building, Washington 5, D. C.; Henry Kaiser, Isaac N. Groner, Esqs., 1701 K St., N.W., Washington, D. C.; E. F. Colladay, Esq., D. C. Colladay, Esq., 1331 G. St., N.W., Washington 5, D. C.; Cary M. Euwer, Esq., 800 Tower Bldg., Washington, D. C.

JAMES H. HELLER

FILED MAR 9 1959

Joseph W. Stewart
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,443

PETER H. OLSON, etc., *Appellant*,

v.

CHARLES MILLER, ET AL., *Appellees*.

**OPPOSITION TO APPELLANT'S PETITION FOR
REHEARING OR FOR CLARIFICATION
OF OPINION**

This opposition, written on behalf of the individual (not any bank) appellees, is addressed to Point I of appellant's petition.

I

If appellant's petition is taken literally, it is a request that this Court advise or direct appellant as to whom to serve, how to meet counsel fees, and how to proceed, in order to maintain his suit upon remand to the District Court.

This is an extraordinary and perhaps unprecedented request. A plaintiff has the sole responsibility to establish his case, procedurally as well as substantively, just as a defendant has the sole responsibility to appear and to defend, in the form and content required by law, or else suffer judgment to go against him. If a plaintiff has not yet determined whether or how he can serve all parties who must be served under the law, meet the costs of litigation or comply with formal legal procedures, he should not bring suit. If such a plaintiff elects to file a suit which is legally incomplete and invalid, he must take the consequences. He should not be heard to pray for special dispensations because he is perplexed about proper procedure. To ask a Court to suggest possible defendants, fees and formal procedures, is an egregious departure from legal procedure—beyond beckoning the Court to indulge in essentially advisory, contingent and speculative matters, it demands that the Court assume the legal burden which properly must be met solely by appellant.

II.

As the literal purport of appellant's petition is so alien to accepted legal procedure, its implicit purpose invites comment. If appellant cannot genuinely be anticipating that this Court will underwrite a detailed plan for his next legal moves, can he be hoping that his difficulties as recited in his position will move the Court to change its opinion as to the indispensability of Local 118, BCW? This may well be appellant's actual purpose.

If so, the petition is no more than a routine, albeit circuitous, petition for rehearing, asking the Court to reconsider issues which have been fully briefed and argued. The issue of indispensable parties was recognized as one of the central issues in this case, and was so treated by both sides in the briefs and in the oral argument. This Court dealt with the issue in its opinion. Appellant's petition

suggests no reason for the Court to reconsider its holding that Local 118, BCW is one of the parties which is indispensable and which has not been served so that unless service is effectuated by appellant, the complaint must be dismissed.

III.

This Court clearly held that the District Court should dismiss the complaint "If appellant fails to join such parties as the District Court regards indispensable, after opportunity is offered . . .". Slip opinion, p. 6. In accordance with the decision of this Court, any issues raised by the procedure adopted by any of the parties, with respect to joinder and the opportunity for joinder, are to be decided by the District Court, under regular trial court practices.

There is no warrant for this Court's dealing with trial issues on a petition for rehearing, especially when this Court has expressly held that such issues must be raised by the parties and disposed of in the District Court.

IV.

Appellant, who gained a judgment of reversal, has evidently found portions of the opinion of this Court which he desires amplified or amended. It is believed that there is no basis for entertaining appellant's request.

If this petition is nevertheless granted, appellees hereby move for leave to file their own petition for rehearing, on the issues which they regard as incompletely or incorrectly decided from their own viewpoint. If this case is to be reheard at all, it should in all fairness and logic be reheard in its entirety.

CONCLUSION

For the reasons set forth herein appellees respectfully submit that appellant's petition should be denied.

Respectfully submitted,

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